

(5) *NOTICE REQUIREMENT.*—The amounts may be obligated or expended only if the Mayor notifies the Committees on Appropriations of the House of Representatives and the Senate in writing 30 days in advance of any obligation or expenditure.

(6) *AVAILABILITY OF FUNDS.*—Funds made available pursuant to this section shall remain available until expended.

This Act may be cited as the "District of Columbia Appropriations Act, 2004".

The PRESIDING OFFICER appointed Mr. DEWINE, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. STEVENS, Ms. LANDRIEU, Mr. DURBIN, and Mr. INOUE conferees on the part of the Senate.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:39 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF MAJ. GEN. ROBERT T. CLARK TO BE LIEUTENANT GENERAL

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, pursuant to the order of November 14, I ask that the Senate now proceed to executive session to begin consideration of Executive Calendar No. 418, the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

Mr. WARNER. Mr. President, there are a number of Senators who desire to speak. I will just say a few words. To accommodate my distinguished colleague from Kentucky, who has been a valiant supporter of this nomination and very persistent over this long period of time, I will yield the floor. He then could be followed by the Senator from Massachusetts and then I would continue my remarks.

I wonder if I just might ask unanimous consent that the Senator from Virginia proceed for not to exceed 3 or 4 minutes, followed by the Senator from Kentucky for about 10 or 12 minutes, followed by the Senator from Massachusetts. How much time does my colleague desire?

Mr. KENNEDY. I think 40 minutes.

Mr. WARNER. Not to exceed a period of about 40 minutes for the Senator from Massachusetts.

Mr. KENNEDY. I think Senator DAYTON also had 15 minutes. I think there is a unanimous consent agreement for this; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I was not able to hear.

Mr. KENNEDY. I think there is a consent that has been agreed to whereby there are 2 hours equally divided, with 40 minutes for myself and 15 minutes for Senator DAYTON.

Mr. WARNER. The Senator is correct on that.

Mr. KENNEDY. I will not necessarily take all of that time.

Mr. WARNER. Mr. President, I thank my colleague.

Major General Clark is a highly qualified officer for promotion to the rank of lieutenant general. I have met with him several times. His proposed assignment by the Secretary of Defense is to be Commander of the Fifth U.S. Army.

He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions. On both occasions he conducted himself with deference and respect not only for the serious issues at hand but for all persons involved in this tragic sequence of facts which preceded his nomination.

He expressed great respect for the constitutionally-based advise and consent power and the responsibility of the Senate to look into this nomination with great thoroughness. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion. Indeed, the Secretary of Defense personally, in a very respectful way, has talked to me about this nomination and his strong support for this nominee.

I will detail at length later on in the course of this debate the very thorough steps taken by the Senate Armed Services Committee. I commend my colleagues on the committee. There were unusual facts associated with this nomination involving tragic loss of life, a strong disciplinary action against those who brought about the direct harm to the victim who gave his life. In the course of that, I and other members of the committee took it upon ourselves to meet with the family members of the deceased victim in this particular case. I wish to commend them. They handled themselves in a manner of great distinction, given the depth of emotion on their part.

I also commend the former Vice Chief of the Army, General Keane. He took it upon himself time and time again, working with the distinguished Under Secretary of the Army, Les Brownlee, to repeatedly go back and reinvestigate certain aspects of this case. I hope to the satisfaction of all Members, certainly to this Senator and generally members of the committee.

Mr. President, I yield the floor to accommodate my colleague. I again thank him for his strong tenacity in supporting this nomination throughout.

Mr. BUNNING. Mr. President, I rise in strong support of MG Robert Clark to the rank of lieutenant general and

commander of the Fifth Army. I first met General Clark over 5 years ago when he was commander of the 101st Airborne Division at Fort Campbell, KY. Since that time, I have known General Clark to be an honest man and an excellent soldier. The military communities in Kentucky and Tennessee surrounding Fort Campbell admire General Clark very much. He is well respected throughout the Army, and we should be grateful that we have soldiers like General Clark serving and protecting our Nation.

GEN Jack Keane, who commanded General Clark at Fort Campbell, said this about him:

In my 37 years of service, I have never met an officer who is such a tower of character and integrity. His peers, subordinates, and superiors all respect and admire him for the truly special person that he is.

General Clark loves the Army and he loves his country. Some may even say that General Clark was born with the desire to serve his country in his blood. Both of his grandfathers served in both World War I and World War II. His father served for 31 years and fought in both World War II and the Korean conflict. His older brother served in Vietnam. One of his younger brothers is an Air Force colonel, and another brother is an Army lieutenant colonel on the front lines in Korea.

The Clark family has made many sacrifices so that future generations of Americans can live in peace. General Clark has given 33 years of his life in the armed service to this great Nation. He is a decorated soldier and has shed his own blood for our country. He led a platoon in Vietnam, commanded a brigade that was dropped deep into Iraq during Operation Desert Storm.

As commanding general of the 101st Screaming Eagles, he deployed himself, with his troops, all over the world, from Kuwait to El Salvador. Most recently, General Clark has been deputy commander of the Fifth Army and mobilized Guard and Reserves for homeland defense and Operation Iraqi Freedom. He has worn just about every hat the Army has to offer.

COL Mike Oates, who served under General Clark at Fort Campbell, said this about him:

He spoke straight to the soldiers. He looked them in the eye and he set high standards for wearing our equipment and how we behaved. Discipline is what keeps good units effective and reliable. He enforced discipline and set the example himself.

I could go on and on about General Clark's distinguished career. But I need to address the tragic incident that has held up his nomination, which occurred while General Clark was at Fort Campbell. A murder occurred at Fort Campbell on July 5, 1999. PVT Barry Winchell was killed in a tragic event that none of us should ever forget. Private Winchell was murdered by a fellow soldier, who is serving—and deservedly so—a life sentence for this horrendous crime.

I do not wish to address the details of this horrible murder, but I do wish to

extend my thoughts and prayers to Private Winchell's family and friends. I have spoken with General Clark several times about this tragic incident. I know how sorry he is about the murder of Private Winchell, especially since it did happen on his post and under his leadership.

But it is important to note that after the incident—and as the general court martial convening authority—General Clark approved the maximum punishment for the convicted murderer.

I want to set the record straight. A small, yet loud minority has blamed General Clark for this tragic death. Nothing could be further from the truth.

A man who has given 33 years of his life to protect all Americans—all Americans—does not deserve to be treated this way. Army investigations and many interviews were conducted to dispel the misinformation over this incident. And the Army has recommended General Clark for nomination to lieutenant general and commander of the Fifth Army because he is the most qualified soldier for this job.

The President nominated General Clark for this post and important rank. It is important to note that the Senate Armed Services Committee approved his nomination.

I thank Committee Chairman WARNER and Ranking Member LEVIN for helping to move his nomination through the committee.

Mr. President, our military has an old saying: "Not for self, but for country."

Those who know General Clark in the Army and in the communities in which he has served all think of him when they hear this statement. General Clark is a man who has given his entire life not for self but for God and country. I thank him for it.

We should all be grateful to him for all the sacrifices he has made for our freedoms and our protections. I urge my colleagues to support the nomination of GEN Robert Clark. He deserves it and he has earned it.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, may I express appreciation to my colleague from Kentucky again for his taking long hours to personally look into this case in a very objective way and in reaching his conclusions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to remind me when I have used 15 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I oppose the nomination of Major General Clark to the rank of lieutenant general.

I agree that General Clark has a strong record as a soldier. He has received numerous decorations for his distinguished service and courage, and he has served in a number of leadership

capacities during his more than 30 years in the Army.

I am concerned, however, about General Clark's performance as Commanding General at Fort Campbell, KY, at the time of the brutal murder of PVT Barry Winchell on the base in 1999.

There are few more respected units in the Army than the 101st Airborne Division at Fort Campbell. The "Screaming Eagles," as the division is called, has a well-deserved reputation of professionalism, heroism, and outstanding performance. Yet, in the months leading up to the murder of Private Winchell, the command climate at Fort Campbell was seriously deficient. According to a report by the Army inspector general, Fort Campbell had command-wide low morale, and inadequate delivery of health care to soldiers and their families, and the leadership condoned widespread, leader-condoned underage drinking in the barracks.

There is compelling evidence that anti-gay harassment was pervasive at Fort Campbell during this period. The inspector general reported multiple examples of anti-gay graffiti, the use of anti-gay slurs in cadences by non-commissioned officers during training runs, and routine remarks and bantering that, in the inspector general's words, "could be viewed as harassment." Outside groups have documented many instances of anti-gay harassment in the months leading up to the murder.

The inspector general also found that prior to the murder, there was no sustainment training at Fort Campbell on the proper implementation of the Homosexual Conduct Policy, known as "Don't Ask, Don't Tell" and that, as a result, "most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy."

In his response to my questions, General Clark stated that he agrees with these findings, but that he was nevertheless not aware of even a single instance of anti-gay harassment before the murder.

On July 5, 1999, after enduring anti-gay harassment for many months, including harassment by members of his chain of command, Private Winchell was bludgeoned to death with a baseball bat by a fellow soldier in his barracks.

It seems clear that if General Clark had exercised his responsibility to deal with the serious anti-gay harassment that was prevalent at Fort Campbell during his 17 months of command leading up to the murder of Private Winchell, the murder would probably not have occurred.

Even more serious, however, was General Clark's performance at Fort Campbell in the days, weeks, and months following the murder. A brutal bias-motivated hate crime is an extraordinary event in any community, civilian or military, and it demands an

extraordinary response from the community's leaders. Such a crime sends the poisonous message that some members of the community deserve to be victimized solely because of who they are. The potential for such a crime was magnified in this case because of the existing climate of anti-gay harassment at Fort Campbell, but the available evidence indicates that General Clark's response was not adequate with respect to his contacts with Private Winchell's family or his command responsibilities at Fort Campbell.

One factual issue which I have repeatedly asked the Army to resolve, without receiving a satisfactory response, is why General Clark did not meet with the parents of Private Barry Winchell, Patricia and Wally Kutteles, in the days following his murder.

Following such a brutal murder it is difficult to believe that such a meeting did not take place. Any responsible and compassionate commanding officer would want to meet with and console the parents of the murdered soldier, even if no request for such a meeting had formally been made.

I understand that during the 4 days immediately following the murder, General Clark was at the Walter Reed Army Medical Center in Washington with his wife, who was undergoing tests for a longstanding illness. It is understandable that General Clark had declined to meet with the parents for this reason, during that period and did not attend the memorial service for Private Winchell on July 9. But Clark did not meet with the parents in the days after his return to Fort Campbell from Walter Reed Hospital nor in the weeks and months that followed the Winchell murder. Instead, he states that he never received a request to meet with the parents, but he would gladly have met with them if he had received a request to do so.

Patricia Kutteles, Private Winchell's mother, has submitted a sworn affidavit stating that she and her husband traveled to Fort Campbell immediately after hearing about her son's murder. She was assigned an Army liaison officer, Lieutenant Colonel Stratis, as their point of contact with Fort Campbell and the Army. Two or three days after the murder, she made a request to Lieutenant Colonel Stratis to meet with General Clark to talk about her son's death. Lieutenant Colonel Stratis told her that General Clark was unable to meet with them.

There are three possible explanations for this dispute of fact: Ms. Kutteles may have submitted a false affidavit, General Clark may have given false information to the Committee, or General Clark was, for some reason, not informed by his staff about the parent's request.

Like others on the Armed Services Committee, I have met with the parents, and I was struck by their sincerity, their patriotism, and their continuing support for our Armed Forces in spite of the tragedy. I find it difficult to believe that they are lying or

mistaken when they say they asked for a meeting with General Clark.

Nevertheless, that appears to be the position of the Army inspector general, who states in his most recent memorandum, dated October 20, 2003, that the mother's statement in the affidavit is "unfounded." The inspector general states that his office "determined, after extensive interviews, none of the key staff members and other relevant witnesses recalled receiving or learning of such a request."

I have seen several of the affidavits relied upon by the inspector general, and I found the statements relied on to be disturbingly non-responsive. These affidavits fail to resolve the serious factual dispute about whether the parents requested a meeting with General Clark, and it seems improper for the Army inspector general to suggest that no such request was made.

I believe that it is inappropriate for the Senate to act on this nomination until this issue is more satisfactorily resolved.

General Clark states that he was not aware of any instance of anti-gay harassment on the base before the murder. At the very least, the murder should have made painfully clear that anti-gay bias and anti-gay harassment were real and pressing problems at Fort Campbell, problems that demanded an immediate and effective response. Yet from the very start, and throughout the remainder of his command, General Clark and his office took patently ineffective steps to respond to these specific problems.

Two days after the murder, the Fort Campbell public affairs office issued a statement describing the incident as a "physical altercation in a post barracks," insinuating that Winchell was partly responsible for his own death. In fact, Winchell was asleep in the barracks when he was attacked by his killer. General Clark stated that he probably learned about the false press statement 3 or 4 days later, following his return to Fort Campbell from the Walter Reed Army Medical Center. He said he did not instruct the public affairs office to retract the statement or issue a correction because "comments by my command spokesperson regarding the case might well have influenced the investigation, or suggested that I had reached premature conclusions about the case, and might have influenced or tainted the deliberations of any soldier serving on a court martial panel."

It is important for a commanding officer not to make statements that might influence an investigation or court-martial. But it is well established in military law that a statement may be made to correct a false public statement, in order to avoid prejudice to the Government or the accused.

General Clark's explanation is doubly unconvincing in the light of the fact that the Fort Campbell public affairs office made a statement, 2 days after Clark returned to Fort Campbell, that

there was "no evidence" that Private Winchell was killed because he was gay. This statement was clearly false, and it also raised a far more serious issue about whether the command at Fort Campbell was undermining the ability of the Government to prosecute the murder as a bias-motivated offense.

In fact, anti-gay harassment continued in the months following the murder.

The continuing anti-gay harassment at Fort Campbell was also accompanied by a sudden exodus of soldiers discharged for violations of the Homosexual Conduct Policy. In the 10 months after the murder, 120 soldiers were discharged from Fort Campbell under this policy, compared to only 6 such discharges from Fort Campbell during the same time period in the previous year. In all of 1999, there were 271 such discharges in the entire Army.

Instead of dealing directly with the problem of anti-gay harassment, General Clark chose to deny that any problem existed. In an op-ed article in the New York Times, a year after the murder, he stated that "There is not, nor has there ever been during my times here, a climate of homophobia on post."

In addition, he refused to meet with groups concerned about the welfare of gay soldiers, including a local gay community group, and the Servicemembers Legal Defense Network, a national organization.

Another of General Clark's most serious failure of leadership after the murder is the fact that, from all the evidence we have seen, he did not even once speak out against the specific problems of anti-gay harassment and anti-gay violence, or implement any training for the soldiers against it.

He did take general steps after the Winchell murder to address the quality of life for soldiers at Fort Campbell, and he reinforced existing programs on the need to treat all soldiers with "dignity and respect." These measures were helpful, but hardly sufficient to address the specific problem of anti-gay harassment.

Private Winchell's murder was an anti-gay hate crime, and it called for, at the very least, a clear and unequivocal statement by Fort Campbell's commanding officer that violence against homosexuals is wrong. According to the record, no such statement was ever made.

General Clark has been asked repeatedly for instances in which he spoke publicly about anti-gay harassment. In his response last November 6, 2002 to written questions, he listed a number of speeches, press conferences, and publications, but none of these examples dealt with the specific problem of anti-gay harassment.

For example, General Clark wrote that on January 14, 2000:

I published an article in the post newspaper, The Fort Campbell Courier, in which I emphasized the quality of soldiers serving at Fort Campbell, and outlines the initia-

tives we had undertaken to eliminate anti-gay harassment. I also reinforced our longstanding policy of treating all soldiers with dignity and respect.

In fact the article itself contains no information regarding efforts to address anti-gay harassment—not even a statement that such harassment is wrong. The article includes only two references to homosexuality.

First, General Clark writes that he has requested a review and assessment: to determine whether any member of this command violated the Department of Defense Homosexual Conduct Policy in any interaction with PFC Barry Winchell.

Second, he writes that he has:

issued a policy on the handling of discharges for homosexual conduct to ensure these matters preserve the privacy and dignity of individual soldiers.

There is nothing in the article about anti-gay harassment. It deals only with the "Don't Ask, Don't Tell" policy.

The article refers only to General Clark's efforts to improve barracks conditions generally and his "special emphasis" on the dignity of all soldiers. Much of the article is defensive in tone; General Clark writes that the soldiers at Fort Campbell are the "best we have ever had," that they are "intolerant of abuse of anybody for any reason," and that "leaders" at Fort Campbell "set the example through word and deed." He concludes with this sentence:

This is the climate that exists at Fort Campbell, in contrast to which you have seen on TV and in the papers during these past few months.

This tone has characterized much of General Clark's public statements during the remainder of his command at Fort Campbell. On June 9, 2000, he said at a news conference that he objects:

in the strongest terms to the way our soldiers, and the climate that embraces them, have been characterized.

At a Rotary Club meeting in March 2000—another event listed by General Clark as an example of his efforts to address anti-gay harassment—press reports, say that he:

used the Rotary speech to lambaste the Kentucky New Era and other area newspapers for printing an earlier story on his refusal to allow Servicemembers Legal Defense Network to place an advertisement in the post newspaper.

The ad had listed an anonymous hotline number for the Army inspector general's office and the telephone number for the organization. General Clark justified his decision to reject the ad on the ground that the inspector general's office had all the access it needed to soldiers on post. Newspaper reports of General Clark's Rotary Club speech contained no mention of any statement condemning anti-gay harassment.

I have repeatedly asked the Department to investigate this issue further, to find out whether in fact General Clark made any statements specifically addressing anti-gay harassment and anti-gay violence following the

Winchell murder. But the responses of the Department have been inadequate.

In response to similar questions by the parents, the inspector general stated:

During the 6 months following the murder, Major General Clark was personally involved in talking to Commanders at all levels about the anti-gay harassment.

There have been other cases where commanding officers have had to respond to tragedies, and they have done so in a variety of ways that demonstrate their leadership.

Many have drawn comparisons between General Clark's response in this case and General John Keane's response to the murder of African American civilians at Fort Bragg by racist soldiers. After these murders, General Keane held a 1-year anniversary remembrance and publicly offered his condolences. He met with the NAACP and the Anti-Defamation League to discuss the murders and consider ways to improve the racial climate.

General Keane offered very strong public statements against racism, and he implemented sensitivity training on the base. General Clark did none of this.

In all the services, discrimination against gays is codified in the ban on their service in military. In reporting anti-gay discrimination, soldiers face potential investigation, further harassment, and even discharge. This makes this population even more vulnerable to acts of harassment and violence, which makes it even more essential for leaders to act quickly and effectively in response to attacks on soldiers perceived to be gay.

In the recent controversy at the Air Force Academy, the senior leadership has been held accountable, from the Commandant of the Academy, to the Secretary of the Air Force. The Commandant of the Air Force Academy has been held responsible for the shortcomings of his subordinate commanders.

General Clark never held a single officer responsible for the command climate that led to the murder of Private Winchell. General Clark did not take responsibility for addressing the problem of anti-gay harassment at Fort Campbell after the murder. He should bear the ultimate responsibility for the climate that led to this tragedy and for not remedying that climate afterwards.

These are important questions that go to the heart of this officer's suitability for promotion to lieutenant general. The Senate deserves better information acting on such a controversial nomination.

I will just review for a few moments the difference between Fort Bragg and Fort Campbell. This is the difference, the comparison between General Keane's response to the murder of two African-American civilians and General Clark's response to the murder of PVT Barry Winchell. Fort Bragg:

In December 1995, three White Fort Bragg soldiers murdered two Black North Carolina

civilians. Then Fort Bragg commanding general, LTG John Keane, currently General Keane, did the following actions after the murder:

At Fort Bragg, an on-base memorial service for "remembrance and reconciliation" was held 1 year after the murders. Lieutenant General Keane publicly communicated strong condolences.

On General Clark's actions after the murder, he declined to meet with the Winchell family, did not attend the Winchells' on-base memorial service held shortly following the murder, and did not hold any subsequent memorial events.

LTG John Keane invited the NAACP and the ADL to discuss the murders and work with the base to improve the racial climate. The local NAACP leader, James Florence, on the NAACP's relationship with Fort Bragg, said:

Since [the murders] we have had a liaison with Fort Bragg. We can talk with them almost any time we need.

General Clark declined to meet with the gay groups, declined to meet with the legal defense funds, and declined to meet with gay veterans organizations.

There is a dramatic difference between two commanding officers and how they dealt with the hate crimes. General Keane's response to the soldiers after the murders? LTG John Keane and the Army launched an aggressive program to "weed skinheads and extremists out of the military." General Keane said:

We did not see this cancer coming. We missed the signs, symbols, and manifestations of extremism.

General Keane implemented sensitivity training at Fort Bragg regarding race relations. He said:

We've educated our people, in terms of what to look for and how to deal with it, and when we find soldiers whose attitudes and behavior are disruptive to good order and discipline of our unit, we are going to act.

General Clark publicly stated there was not a climate of homophobia on Fort Campbell, did not make any public statements or issue any written directives and never publicly communicated an appreciation of the harm caused by the antigay murder.

There are dramatic differences between how an officer dealt with this, who continues to serve with great distinction in our service, and the nominee.

Finally, here is the comparison between General Clark's response to the murder of PVT Barry Winchell and the response of the Air Force Academy leaders on sexual assaults. At the Air Force Academy during the period of 1993 through 2003, 60 cases of sexual assault were reported. Earlier this year, LTG John Dallager, the academy commandant from 2000 to 2003, lost his third star and retired as a major general because the Secretary of the Air Force determined he "did not exercise the degree of leadership in this situation that we expect of our commanders."

In September 2003, an independent panel commissioned to review the cli-

mate situation issued a report supporting the demotion of General Dallager and recommending an additional review to assess the actions taken by other leaders and holding individuals accountable.

On General Clark, in July 1999, two Fort Campbell soldiers murdered Barry Winchell because they believed him to be gay. This murder occurred on the base, in the barracks. This murder and additional problems with antigay harassment occurred during the tenure of Commander Clark and there has been no response.

My final point on the ultimate responsibility:

General Dallager is the Academy leader—[this was the finding]—bearing ultimate responsibility for the failure to adequately respond to sexual assault issues.

The Panel concurs with the decision . . . to retire General Dallager. . . .

Retire him.

On the ultimate responsibility, Army leadership doctrine states that commanders:

. . . have to answer for how their subordinates live and what they do after work.

That is in the field manual.

In a July 19, 2000 article in the New York Times, General Clark stated:

There is no, nor has there ever been during my times here, a climate of homophobia on post.

General Shinseki, on July 21, 2000, stated in a DoD News Briefing:

We take full responsibility for what happened to Private Winchell. . . .

There is General Shinseki taking responsibility. There is a general.

We take full responsibility for what happened to Private Winchell.

General Clark has failed to accept similar responsibility in this case and doesn't deserve the promotion.

On another matter, I believe there is some remaining time.

Mr. WARNER. Mr. President, I was going to reply to some of the points my colleague from Massachusetts made. As you well know, the General—

Mr. KENNEDY. May I reserve the remainder of my time? Is this on the Senator's time?

Mr. WARNER. Yes.

Mr. KENNEDY. Since I had the floor, I want this additional comment I would like to make on another subject, but I also want to respond to the questions of the Senator, so I will be glad to do whatever you would like.

Mr. WARNER. Mr. President, parliamentary question: We are on this nomination with 2 hours of debate and 1 hour each divided equally. I manage this side and Senator KENNEDY manages that side. If the Senator wishes to go on to another matter, I am not sure how the Senator wishes to handle this.

Mr. KENNEDY. Mr. President, it is not difficult, I think, since I have 40 minutes. I will use my remaining time and ask that my comments be inserted into another part of the RECORD so it doesn't interfere, and then I will be glad to answer any questions of the Senator.

Mr. WARNER. Mr. President, I wonder if the Senator from Massachusetts will accommodate the Senator from Virginia. I would like to make some comments with respect to his important remarks while they are fresh in the minds of the listeners. I think it is appropriate that I take a little time. Then, as far as I am concerned, we will both yield back our time and the Senator from Massachusetts can take some time on another matter, if he wishes. Is that helpful?

Mr. KENNEDY. How long did the Senator plan to speak?

Mr. WARNER. I will summarize my comments in about 5 or 6 minutes, at the conclusion of which we could both yield our time.

Mr. KENNEDY. Mr. President, if the Senator wants to address the Senate first, Senator DAYTON was yielded 15 minutes.

Mr. WARNER. That is under the order. I didn't realize he just walked in the Chamber. I am trying to do the best I can to accommodate everybody and manage the time efficiently. But I do desire at this point in time an opportunity to reply to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I will yield the floor for that purpose and ask unanimous consent that at the conclusion I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, the Senate had a comparison between how General Keane and General Clark handled problems within their respective commands. General Clark was the convening authority, and the tragedy that occurred to which the Senator referred, and which is the subject of some comments here today, came up through the military command, was handled by the military courts and the military authorities, and adjudicated. As the convening authority, I think he took some prudent steps to make certain that in no way could he be accused of command influence. The tragedy in General Keane's command was tried in the civilian courts, and as such he was not the convening authority. He then had the opportunity to do some things which I believe General Clark did not.

Out of this tragedy, there were lessons learned in the Army. I think some important new policy matters were put into the regulations. Otherwise, not all was lost in this tragic situation.

I ask unanimous consent to have printed in the RECORD the Army Inspector General's Report on Fort Campbell at the conclusion of my remarks. That is the first section of it that addresses a number of points that are raised by the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WARNER. Mr. President, I believe from reading this report—not in the words of the Senator from Massachusetts that no one was trying to stop

these tragic situations—that it was generally a positive command climate. There were some isolated instances of harassment, sexual in nature. I concede that is in the RECORD. But the total quantity of these incidents, in my judgment, was not indicative of a breakdown in the command responsibilities under General Clark.

General Clark, as I said, came to the committee on two occasions and subjected himself quite willingly—indeed, under oath; I put him under oath at the second hearing—and he responded to the cross-examination, much of which the distinguished colleague from Massachusetts has raised today.

In conclusion, he has an extremely impressive record of military service stretching back to 1970. Much of that has been covered by my colleague from Kentucky.

Mind you, Fort Campbell is an installation that can at times host a daily population of 24,000 military personnel and over 200 company-sized units.

In July of 1999, this brutal murder was committed at Fort Campbell by an intoxicated 18-year-old soldier who used frightful force against PFC Barry Winchell. This resulted in his death, allegedly while he was sleeping. No one underestimates the seriousness of this crime.

Senator LEVIN and I met in May of this year with the parents of Private First Class Winchell. Like General Clark, we extended our sympathy and sorrow for their loss. The committee listened very closely to the assertions they made about a lack of appropriate treatment by General Clark and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of the meeting, Senator LEVIN and I asked Private First Class Winchell's parents to put the questions and concerns they had raised with us at that meeting in a letter, and we would obtain answers from the Department of Defense—specifically, the Department of the Army—and share those answers with them. That we did. The parents sent us a letter and Senator LEVIN and I forwarded these questions to the Department. In September, the Department responded to questions and expressed continued support for Major General Clark's nomination.

I ask unanimous consent that all of these matters be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. WARNER. Mr. President, not only the steps taken by the Armed Services Committee, together with my distinguished colleague Senator LEVIN, but indeed by the Department of the Army into other areas overall reflect, I think, that our committee carefully looked into this matter and that the Department of the Army was responsive to the questions raised by my colleagues.

Mr. President, MG Clark is highly qualified for promotion to the rank of lieutenant general assignment as Commander of the Fifth United States Army. He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions, and, on both occasions conducted himself with deference and respect for the members of the committee, and with appreciation for the Constitutionally-based advice and consent power—and responsibility—of the Senate. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion.

General Clark has an extremely impressive record of military service stretching back to his commissioning in 1970. General Clark's military record includes combat service in Viet Nam for which he was awarded the Bronze Star with Combat "V." He has served as a Battalion Commander and a Brigade Commander with the renowned "Screaming Eagles" of the 101st Airborne Division. In this capacity, he participated in Operations Desert Shield and Desert Storm. Major General Clark later served as Chief of Staff for the 101st Airborne Division, and from 1998 through 2000 as Commanding General of the 101st Airborne Division and Fort Campbell, KY.

Fort Campbell is an installation that can, at times, host a daily population of over 24,000 military personnel and over 200 company sized units. In July 1999, a brutal murder was committed at Fort Campbell by a drunken, 18-year-old soldier who bludgeoned Private First Class Barry Winchell to death in his sleep. This tragic and senseless crime was not foreseeable—not foreseeable by PFC Winchell's company commander and certainly not foreseeable by Major General Clark. General Clark capably and competently fulfilled his responsibility as General court-Martial convening authority in this murder trial and took steps necessary to ensure that the perpetrator of this crime and an accomplice were brought to justice. This was accomplished and the soldier who murdered PFC Winchell is serving a life sentence.

Senator LEVIN and I met in May of this year with the parents of PFC Winchell. We, like General Clark, extended our sympathy and sorrow for their loss. As leaders of the committee, we listened very closely to the assertions they made about a lack of appropriate treatment by General Clark, and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of our meeting, Senator LEVIN and I asked PFC Winchell's parents to put the questions and concerns that they had raised with us in a letter, and we would obtain answers from the department and share those answer with them. The parents did so, and we sent their questions to the department in June.

In late September, the department responded to the questions, and expressed continued support for Major General Clark's nomination. The Army undertook to conduct inquiries through the Army Inspector General in response to the questions raised by the parents, and, I believe, did respond fully to the issues that were raised.

In late September, Senator LEVIN and I forwarded the Department's response to PFC Winchell's parents inviting them to respond. They did so on October 8th. On October 10, Senator LEVIN and I forwarded their letter to the department together with additional questions from Senator KENNEDY requesting comment. We received a response from secretary Abell and Acting Secretary Brownlee on October 21st and, shortly thereafter, we conducted our second executive session.

The committee compiled a very thorough record about all the issues raised by Senator KENNEDY and others. I will not go into specific details, but it is important to note that the Army Inspector General conducted an investigation into the circumstances surrounding the July 1999 death of PFC Winchell after the court-martial was completed, and the IG found no basis to support accusations of dereliction of duty and failure of leadership by General Clark. To the contrary, the investigation found a positive command climate at Fort Campbell and refuted the assertions that Major General Clark should have done more or could have prevented this tragedy.

I am very concerned about ensuring accountability of military officers, and I have insisted at looking very closely at the actions of military leaders who are entrusted with command. I am satisfied that General Clark did not fail in his command responsibility and is fully deserving of promotion. I urge my colleagues to support this nomination.

EXHIBIT I EXECUTIVE SUMMARY

Background

On 5 July 1999, Private First Class (PFC) Barry Winchell, D Company, 2nd Battalion, 502nd Infantry Regiment, Fort Campbell, Kentucky, was murdered by a fellow soldier. Following this incident, and amid claims that PFC Winchell was murdered because he was or was perceived to be a homosexual, allegations arose concerning the command climate at Fort Campbell particularly as it related to the command's enforcement of the Department of Defense (DOD) Homosexual Conduct Policy [hereinafter the Policy]. The Army pledged early on to assess the command climate and investigate the alleged violations of the Policy; however, to avoid interfering in the individual judicial proceedings underway, the Army could not begin that effort until the conclusion of the two courts-martial arising out of PFC Winchell's death.

On 10 January 2000, the Secretary of the Army (SA) directed that the Department of the Army Inspector General (DAIG) conduct an investigation into the facts and circumstances surrounding the death of PFC Winchell as it related to the Policy (enclosed) [hereinafter referred to as directive]. In addition, the DAIG was tasked to conduct an assessment of the command climate then

existing in PFC Winchell's unit prior to his death and an overall assessment of the command climate existing at Fort Campbell prior to PFC Winchell's death, specifically as it related to the Policy. Finally, the DAIG was directed to provide an overall assessment of the Department of the Army's (DA) implementation of the Policy. The Fort Campbell assessment provided the initial data for the Army assessment of the Policy. The Army IG will continue to assess these issues as part of their continuing inspection program.

Task Force Composition, Training, and Methodology

A Task Force of 27 individuals was established to conduct the investigation and assessment in accordance with the directive. The Task Force was composed of inspectors general (IGs), one legal advisor, and subject matter experts. During early February, the Task Force received training from the subject matter experts in the areas of the Policy itself, Equal Opportunity (EO), interview techniques, and group dynamics. Further, the Task Force conducted mock individual interviews and group sensing sessions in order to validate the assessment strategy. Finally, at the request of the Servicemembers Legal Defense Network (SLDN), key leaders of the Task Force met with representatives of the SLDN to identify specific concerns of the organization. The SLDN is a national legal aid organization that assists soldiers affected by the Policy.

The scope of the assessment included the following: Interviews with the commanding general, 101st Airborne Division (Air Assault), both assistant division commanders who were occupying those positions in July 1999, and interviews with 47 brigade and battalion-level commanders from both divisional and nondivisional tenant units. In addition, the Task Force conducted 68 sensing sessions composed of soldiers randomly-selected by utilizing the last two digits of the social security number. In these sessions, 568 soldiers were interviewed and 1,385 command climate surveys were administered throughout Fort Campbell. With respect to the sensing sessions, it should be noted that all of these soldiers were assigned to Fort Campbell from the period of April 1999 through February 2000. In addition, participants who completed a command climate survey were informed that the responses would be anonymous.

In addition to interviews conducted on Fort Campbell, the investigation team conducted on-site interviews at Fort Benning and Fort Leonard Wood, as well as telephonic interviews with soldiers assigned to Korea, Fort Drum, Fort Knox, Fort Jackson and the United States Military Academy. Civilian members of the Fort Campbell community as well as former members of the Army were also interviewed by the investigation team.

Finally, Task Force members gathered relevant data through on-site inspections and additional periodic spot checks of unit recreation centers, public use areas, and barracks living areas. Finally, the Task Force secured information by directly observing on-post soldier events to include physical fitness training sessions.

History and Background of the Policy

On 29 January 1993, the President directed the Secretary of Defense (SecDef) to review DOD policy on homosexuals in the military. On 19 July 1993, the SecDef directed the following: applicants for military service as well as current servicemembers would not be asked nor required to reveal their sexual orientation; sexual orientation would not be a bar to entry into the service or continued service unless manifested by homosexual

conduct; and commanders and investigating agencies would not initiate investigation solely to determine a member's sexual orientation. On 30 November 1993, Congress enacted 10 United States Code (USC), Section 654, policy concerning homosexuality in the armed forces.

ASSESSMENT RESULTS

Finding 1

Objective: Examine alleged violations of the DOD Homosexual Conduct Policy during the period preceding PFC Winchell's death.

Findings: 1. A preponderance of evidence indicated that two noncommissioned officers (NCOs) in PFC Winchell's chain of command and a fellow private (PVT) inquired into PFC Winchell's sexual orientation. In addition, at least one NCO referred to PFC Winchell as a "faggot."

2. In spite of this, however, the evidence gathered demonstrated that the chain of command was proactive in terminating the sporadic incidents of derogatory or offensive cadences during unit marches and physical training (PT) formations.

Summary: Evidence obtained from Fort Campbell indicated that in late May 1999 PFC Winchell asked an NCO from his unit, D Company, 2nd Battalion, 502nd Infantry Regiment, "What would happen if a guy in the military was gay?" In responding to that question, the NCO asked PFC Winchell if he was a homosexual. Testimony revealed that the NCO asked the question in an effort to offer assistance to PFC Winchell in getting professional guidance or assistance in addressing the issue.

Evidence gathered indicated that an NCO in PFC Winchell's unit referred to PFC Winchell as well as other members of the unit as "faggots" in describing those who failed to perform to his standards. On one occasion, the NCO referred to PFC Winchell as a "faggot" after PFC Winchell reported to work in what appeared to be an intoxicated state.

The preponderance of evidence demonstrated that PFC Winchell's chain of command did not condone demeaning or derogatory cadences made during the conduct of unit PT. In those instances where inappropriate remarks were made, company leaders made on-the-spot corrections.

Finding 2

Objective: Determine whether the local IG's office responded appropriately to any complaints of violations of the DOD Policy it may have received prior to PFC Winchell's death.

Findings: The Fort Campbell IG office properly responded to the only known complaint of a violation of the Policy prior to 5 July 1999 when they followed standard Army IG guidance by recommending PFC Winchell provide his commanders the opportunity to resolve his complaint prior to direct IG intervention with the command.

Summary: Immediately after the NCO called PFC Winchell a "faggot," another NCO escorted PFC Winchell to the IG office to file a complaint. Upon being advised that he should provide his commander the first opportunity to address the issue, PFC Winchell was then escorted to his company commander. Evidence obtained indicated that the company commander counseled the NCO regarding his inappropriate remarks.

Finding 3

Objectives: 1. Conduct an overall assessment of the command climate existing at Fort Campbell prior to 5 July 1999, specifically as it relates to the application and enforcement of the DOD Policy.

2. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the DOD Policy.

3. Conduct sensing sessions with randomly-selected members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which the Policy was being enforced.

4. Assess the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment before 5 July 1999.

Findings: 1. Through sensing sessions, interviews, and surveys across Fort Campbell, it was determined that the command climate at Fort Campbell before 5 July 1999 was a positive environment with exceptions related to medical support, on- and off-post housing, after-duty-hours recreation, and shortages of personnel in authorized grades. Most soldiers indicated satisfaction with their mission, training, and organizational leadership.

2. With respect to the Policy, it was clear that the chain of command, from commanding general (CG) through company leaders, responded appropriately to matters with respect to enforcement of the Policy.

3. The specific assessment of D Company, 2nd Battalion, 502nd Infantry Regiment's command climate prior to 5 July 1999 was determined to be poor due primarily to leadership failure of a senior NCO, perceptions pertaining to underage drinking, and other factors beyond the direct control of the company, such as shortages of personnel in authorized grades and quality of life (QOL) issues.

Summary: In evaluating the overall command climate at Fort Campbell, personnel were asked to compare the command climate as it existed in February 2000 with the command climate the year prior. Overall, personnel indicated that the command climate was favorable. The majority of personnel questioned believed that the leadership at Fort Campbell was effective and concerned and treated personnel favorably. In addition, the majority of personnel questioned felt that the chain of command responded appropriately to issues presented to them. Finally, personnel believed that the leadership led by example.

QOL issues contributed to low morale at Fort Campbell. Specifically, issues relating to the conditions in the barracks, problems associated with medical care at Fort Campbell, and treatment received by soldiers from the civilian employees and individuals in the surrounding civilian communities were the major areas of concern to those questioned.

In general, the application and enforcement of the Policy did not appear to be a problem at Fort Campbell. Most leaders took appropriate action in instances where application of the Policy was warranted and appeared to be operating well within the confines of the Policy. Soldiers acknowledged, however, that the joking and bantering that had occurred prior to July 1999 on a regular basis could be viewed as harassment. Following training on the Policy and Consideration of Others (COO), soldiers are now more apt to reconsider uttering phrases that would likely be considered harassment.

However, the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment, in the period prior to PFC Winchell's murder was poor. In addition to the QOL issues identified above, soldiers in PFC Winchell's unit believed that personnel shortages and underage drinking in the barracks to the poor command climate. The most significant factor contributing to the poor command climate, however, was the presence of an abusive NCO in a leadership position in the unit.

Finding 4

Objective: Review and resolve allegations by Private Second Class (PV2) Javier Torres and others of specific violations of the Policy.

Summary of Findings: The preponderance of evidence did not support PV2 Torres' allegation that he was personally harassed at Fort Campbell; however, evidence does support his allegation of routine personal harassment at Fort Benning and occasional personal harassment at Fort Knox. The preponderance of evidence supported PV2 Torres' allegations that during initial entry training (IET) at Fort Benning, one drill sergeant improperly addressed or referred to him as a homosexual, and another PVT provoked a fight with him by routinely taunting him and referring to him as a homosexual. The evidence also supported PV2 Torres' allegation that at Fort Campbell a senior NCO improperly used terms derogatory to homosexuals while trying to motivate male soldiers to perform to standard and two NCOs improperly used terms derogatory to homosexuals while singing cadences during a physical training run. It did not support his allegations that an NCO in his unit at Fort Campbell improperly used anti-homosexual language while conducting training on the Homosexual Conduct Policy, that a soldier at Fort Knox improperly inquired into his sexual orientation, and that an NCO in his unit at Fort Campbell improperly inquired into his sexual orientation.

The preponderance of evidence supported allegations that an NCO at Fort Campbell read a joke to soldiers that was demeaning to homosexuals; anti-homosexual graffiti was present on a wall of a latrine in a unit area, a latrine in a public recreation area, and a latrine in a work area at Fort Campbell; and a nongovernmental civilian, not a soldier, sent an e-mail containing anti-homosexual language to a former soldier at Fort Campbell. The preponderance of evidence did not support allegations that anti-homosexual comments made by soldiers at Fort Campbell were the "norm," soldiers made threatening and inappropriate comments during training on the Policy, an e-mail with a sound wave file attached that contained language demeaning to homosexuals was circulated at Fort Campbell, and an NCO's chain of command improperly inquired into his sexual orientation.

Finding 5

Objectives: 1. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the Policy.

2. Conduct an overall assessment of the command climate that existed then at Fort Campbell, specifically as it relates to the application, enforcement, and training conducted on the Homosexual Conduct Policy.

3. Conduct sensing sessions with randomly-selected military members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which they believed the Policy was being enforced.

Finding: There was no sustainment training conducted at Fort Campbell on the Policy before 5 July 1999 because there was no clearly articulated requirement on how often personnel were to be trained and who was to receive the training. The published guidance indicated: "All officers and enlisted personnel of the Active Army and Reserve Components will receive briefings upon entry and periodically thereafter." Institutional training of personnel on the implementation and enforcement of the Policy was ineffective. Most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy prior to 5 July 1999.

Summary: Nearly all soldiers, NCOs, and officers at Fort Campbell had received training on the Policy at some point in their military career. The training that was con-

ducted, however, did not contribute meaningfully to an understanding or working knowledge of the Policy.

As a result, most personnel did not demonstrate a clear understanding of their responsibilities under the Policy and the standards contained within the Policy.

Finding 6

Objective: Assess whether current training materials adequately convey the substance of the Policy.

Findings: 1. Currently, commanders, leaders, and soldiers at Fort Campbell do not have a clear understanding of the Policy because training and informational materials do not adequately convey the substance of the Policy.

2. Training and informational guidance contain key words (Don't Ask, Don't Tell) that are not defined in doctrine.

Summary: Based on interviews with commanders, leaders, and soldiers, the results of the command climate survey, and a review of records and files at Fort Campbell, it was determined that the training provided on the Policy is not clearly written, not tailored to specific audiences based on rank and duty positions, fails to adequately convey the substance of the Policy, and is presented in a format which does not foster open and meaningful discussion on the issues.

Informational materials distributed to Army personnel, to include a Hot Topics pullout in Soldiers Magazine and a trifold pamphlet, suffered from the same defects according to personnel. The use of the terms "Don't Ask" and "Don't Tell" in the informational materials without providing definitions to explain these phrases created a large amount of anxiety and confusion.

Finding 7

Objective: Provide an overall assessment of the DA's implementation of the DOD Policy by assessing:

1. Whether the Policy is being fairly applied within units.

2. Whether there are currently any other perceived deficiencies in the Policy which preclude effective training, application, and enforcement of the Policy.

Findings: 1. The Policy is being fairly applied at Fort Campbell; however, the Policy with respect to discharges and substantial investigations is not being implemented as intended because commanders perceive an unacceptable risk to the unit and soldier by retaining soldiers who make admissions of homosexuality.

2. Commanders have difficulty in balancing their responsibility to maintain morale, unit cohesion, good order, and discipline while enforcing the Policy. They perceive that the current implementing instructions restrain their latitude to conduct inquiries and preclude them from exercising reasonable discretion in initiating inquiries.

3. AR 600-20 and subsequent Army guidance and messages regarding the reporting of harassment based on homosexual orientation do not adequately advise soldiers where or how to report harassment, and do not adequately advise commanders and agencies how to process these complaints.

Summary: The Task Force determined that the Policy was being fairly applied by commanders at Fort Campbell. The soldiers discharged under Chapter 15 were overall satisfied with their treatment during the process. The Fort Campbell commanders expressed concern in complying with the Policy. They believe it places them in a professional dilemma by requiring them to choose between retention of a soldier who declares a propensity for homosexual conduct and discharge when the truthfulness of his statement of homosexuality is suspect. They are

reluctant to conduct inquiries of the truthfulness of an admission because of the perceived risk to both the unit and the individual soldier.

Commanders stated to the Task Force that they had difficulty in balancing the enforcement of the Policy and the requirement to maintain morale, unit cohesion, good order, and discipline. Commanders expressed concerns that the Policy precludes them from conducting an inquiry when presented with credible information of behavior that demonstrates a soldier may have a propensity to engage in homosexual conduct. They believe the Policy precludes them from exercising reasonable discretion in determining the necessity to conduct an inquiry.

Information gathered by the Task Force determined that guidance on reporting harassment based on sexual orientation by soldiers and investigation into such harassment by leaders is unclear and confusing. Soldiers and leaders expressed frustration with knowing how and to whom to report harassment and how to handle incidents of this type of harassment. They expressed the belief that all harassment should be dealt with uniformly.

In summary commanders and leaders at all levels have an inherent responsibility for establishing a command climate that promotes good order and discipline essential to accomplishing the Army's mission. This responsibility includes promoting unit cohesion by identifying and eliminating harassment before it occurs or results in reports of violations of Army Standards.

EXHIBIT II

OFFICE OF THE UNDER SECRETARY
OF DEFENSE

Washington, DC, March 11, 2003.

Hon. JOHN W. WARNER,
Chairman, Committee on Armed Services, U.S.
Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in reference to the nomination of Major General Robert T. Clark, United States Army, for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army that the President recently sent to the Senate. The President previously forwarded Major General Clark's nomination to the Senate on September 10, 2002; however, his nomination was not acted upon by the Senate prior to the Senate's sine die adjournment on November 22, 2002.

The Secretary of Defense considered reported information concerning Major General Clark. Major General Clark was in command of the 101st Airborne Division (Air Assault) and Fort Campbell at the time Private First Class Barry Winchell, a member of the command who was perceived to be homosexual, was murdered in his barracks by another member of the command. The Department of the Army Inspector General conducted an investigation into the facts and circumstances surrounding the death of Private First Class Winchell and the Inspector General conducted a command climate assessment at Fort Campbell. Neither the investigation nor the command climate assessment determined that Major General Clark was culpable. We previously provided you with a copy of the Department of the Army Inspector General's Report and this incident was addressed in detail at an Executive Session of the Senate Armed Services Committee in the 107th Congress.

I have attached a copy of the following information for your consideration: chronology of the actions and initiatives taken by the Department of Defense and the Department of the Army immediately following the death of Private First Class Winchell; a detailed chronology of published

policies and actions of the dignity and respect for all soldiers directed by Major General Clark while serving as the Commanding General of the 101st Airborne Division and Fort Campbell; and a list of initiatives implemented by Major General Clark with respect to Homosexual Conduct Policy subsequent to the death of Private first Class Winchell.

After careful review of all information, the Secretary of Defense and the Secretary of the Army continued to support Major General Clark for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army. When considered in light of Major General Clark's past performance and future potential, we believe proceeding with the nomination is clearly in the best interest of the Department of the Army and the Department of Defense.

The Department appreciates your assistance in facilitating the confirmation of pending nominations.

Sincerely,

CHARLES S. ABELL,
Principal Deputy.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I thank the chairman of the committee, Senator WARNER, for all of his courtesies during the consideration of this nominee. I mentioned during my comments that we wanted to get additional answers. He has been extremely accommodating to those of us who raised the questions, as he always is as the chairman of the committee. I thank him for his fairness and ensuring that all of those who had concerns were able to conduct our concerns in accordance with the rules. I thank him very much for all of his courtesies.

Mr. WARNER. I thank my colleague.

Mr. KENNEDY. Senator BUNNING I know has a great interest in this. I thank him also.

I will address the Senate briefly on another matter which is of importance and consequence to the Senate. Then I will yield the time because I know my colleague wants to address this issue. Then we will be prepared to move to a vote.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 17 minutes of the 40 minutes.

Mr. KENNEDY. I thank the Chair. If you would let me know when 15 minutes have been used, I would appreciate it.

CONFERENCE REPORT ON MEDICARE

Mr. President, in a very few days we are going to be confronted with the conference report on Medicare. There is no more important issue facing the Congress and no more important issue to senior citizens and their families. Every senior citizen, every child of senior citizens, and every American should understand that this legislation must be defeated or drastically modified.

This conference report represents a right-wing agenda to privatize Medicare and to force senior citizens into HMOs and private insurance plans. The day it is implemented, it will make millions of seniors worse off than they are today. It is a cynical attempt to

use the elderly and the disabled's need for affordable prescription drugs as a Trojan horse to destroy the program on which they have relied for 40 years.

It is important to understand how we got to this point.

First of all, we all understand that Medicare is one of the most beloved programs this Nation has ever enacted. It is depended upon by seniors all over this country. It is a program which is relied on and depended upon, and it works. If there is a failure in the Medicare Program, it was not to have included a prescription drug program in the legislation we passed.

That really is not what this current conference report is all about. This conference report is going to threaten Medicare in a very significant and important way—in a way that those of us who believe in Medicare should not permit.

We started in the Senate with a bipartisan bill to expand the prescription drug coverage. We also provided additional choices to private insurance coverage for senior citizens as the President requested. The bill was not a solution for the problems senior citizens face. It only provided about \$400 billion between now and 2012 toward the prescription costs that will total \$1.8 trillion. But it was a start, a downpayment. It was a fair and balanced compromise that protected Medicare and protected senior citizens. That is why it passed by 76 votes. Only 11 Democrats voted no; only 10 Republicans voted no.

The House took a different course. They passed a bill that was designed to radically alter Medicare, not for the benefit of the elderly. That is why it passed by a slim partisan majority of one vote. Now the conference has been hijacked by those who want to radically alter Medicare, privatize, to voucherize it, to force seniors into HMOs and into private insurance plans.

The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right wing agenda and asks the elderly to swallow unprecedented changes in Medicare in return for a limited and inadequate small prescription drug benefit.

This conference report is so ill-conceived, not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. If this bill passes, the country will want to know: Where was their Senator when the Senate debated a bill that left a quarter of all seniors with worse drug coverage than before the bill passed? Where was their Senator when the Senate debated a so-called premium support demonstration that jacked up senior citizens' premiums—senior citizens who live on a fixed income, who have a median income of about \$14,000—starting us down the road to the unraveling of Medicare? Where was their Senator when the Senate debated a bill that stacked the

deck against Medicare with a \$12 billion slush fund for PPOs and much higher payments for HMOs than standard Medicare? Where was their Senator when the bill gave away \$6 billion to health savings accounts that could jeopardize whole systems of health insurance?

On issue after issue after issue after issue, this report abandons the bipartisan Senate bill and capitulates to the partisan right-wing House bill. On some issues it is even to the right of what the House passed.

One of the most important of these destructive changes is a concept called premium support. It should really be called insurance company profit support or senior citizen coercion support. It replaces the stable, reliable, dependable premium that senior citizens pay for Medicare today with an unstable, unaffordable premium.

Under premium support, the administration's own estimates show the average Medicare premiums will initially jump 25 percent. That is the administration's estimate. Several years ago the estimate was a whopping 47 percent.

The truth is, no one really knows how high the Medicare premiums could rise. But rise they will. But we do know this. Over time, the increase will become higher and higher and higher and higher. That is just average premiums. Under premium support, how much you pay will depend on where one lives, and the amount could change dramatically from year to year. In Florida, you will pay \$900 in Osceola and \$2,000 if you live in Dade County. This chart demonstrates the price of premium support. This is not my estimate of what the premiums are going to be. This is the estimate of the Medicare actuaries. If you live in Dade County, you will pay \$2,050; if you live in Osceola, you will pay \$1,000, twice as much. Explain that to someone who has a house in Dade County when they find out their neighbor is paying half of what they are paying because of premium support. This is just the beginning.

Premium support is a vast social experiment using senior citizens as guinea pigs. If it works as the proponents intend, it will raise the premiums in Medicare dramatically and force senior citizens to join HMOs and PPOs to get prescription drugs. Why would anyone want to make the destructive changes to the Medicare Program that have served senior citizens so well for 40 years? The answer is a radical ideology. They say Medicare is bad. HMOs and PPOs are good.

There is no mystery here. We know what this is all about. The principal supporters of premium support are those people who are strongly opposed to Medicare. Many of our colleagues—our friends, but our political adversaries—want to see the Medicare system withdrawn or destroyed. What do they support? Premium support. What has been accepted in this conference? Premium support.

Some of the supporters of this program claim it's just a demonstration—nothing to get excited about. But it's not a demonstration. Under the terms of the demonstration, 7 million Americans could be forced into the program. Half the States have local areas where senior citizens could be forced to take part in this demonstration.

And that's just today. Tomorrow it will be 10 million senior citizens, or 20 million, or the whole country. People say we can change it. Change it? We will have to pass a law to change it. We will have to come to the Senate and the House of Representatives to change it.

This program will drain healthy seniors from Medicare and leave behind those who are sick and need help the most and it will send premiums for those who remain in traditional Medicare up through the roof. People who support this program make no secret what they want to do. They are on record as saying that Medicare is outdated and should be scrapped and seniors should be forced into HMOs. That is the same philosophy the President embraced when he initially proposed to give senior citizens a drug benefit only if they joined an HMO or PPO. Remember that? That is what this President wanted in March of this year. You only get the prescription drug program if you left the Medicare system and joined. We have carried that view forward with this program. I respect their opinions, but they should not use a prescription drug program as a Trojan horse to foist a bad idea on senior citizens.

The second way this program privatizes and voucherizes Medicare is by providing vast subsidies to the private sector at the expense of Medicare. Payments to the private sector will be 109 percent of the payments to Medicare for the private companies. If we want competition, can someone explain to me why we have to give 109 percent of what we are giving to Medicare to the private companies? Who is paying for those billions of dollars? It is the Medicare population. They have paid in. They are paying in. They are the ones who will pay the 109 percent.

I thought competition was supposed to be an even playing field. Not in this bill. Medicare is at one level; the HMOs are at 109 percent of Medicare. That is what they are getting. Medicare overpays by 16 percent because HMO enrollees are healthier. That is according to the CMS, the governmental institution that reviews these statistics. They find out seniors in private plans are 16 percent healthier than those in traditional Medicare. We ask for a level playing field yet they get 109 percent of what Medicare receives. And the people they are caring for are a good deal healthier than those in Medicare.

It does not stop there. The private plans have an additional \$12 billion slush fund in case they are having difficulty. The 109 percent is not enough. They have a healthier population. But

still, if you need some help, just come my way. We have \$12 billion here with which to reach out and help you.

Medicare will pay at least 25 percent more to insurance companies for every senior citizen who joins an HMO and PPO than it would cost to care for the same person in Medicare. That is competition? That is competition, my friends? That is competition? That is what is in this conference report.

The Medicare trust fund, which today's retirees paid into and rely on, will be robbed to lavish billions of dollars on HMOs. That money, that 25 percent additional premium, ought to be invested right back in terms of the drug program for our seniors.

There is no truer indication of a nation's priorities than the investments it makes. The legislation the Senate considers today squanders that historic opportunity with reckless disregard for the Nation's health.

No provision in the bill reveals its warped priorities more clearly than the \$12 billion slush fund to lure HMOs into Medicare.

Let's see if I have the reasoning behind this fund right. The supporters of this legislation are so convinced HMOs can provide health care to senior citizens more efficiently than Medicare that they have given HMOs a \$12 billion payoff so they can compete. If they are so efficient, why do they need a handout?

I guess the sponsors believe the 9-percent reimbursement bonus HMOs already get is not enough, and that is on top of the 16 percent boost HMOs get from serving a healthier population. It is a good thing HMOs are so efficient or we might have to bleed Medicare completely dry to pay for them.

I wonder which HMO will be the lucky winner for the \$12 billion Government handout. Will it be United Health Group, which made \$1.4 billion last year? Or maybe the \$12 billion lottery winner will be WellPoint, whose profits last year were \$703 million, and whose CEO made \$22.4 million. Perhaps the sponsors of this legislation think he needs a handout to make ends meet.

Anyone who reads the bill and comes to these provisions setting up this slush fund should be sickened at what they see. I challenge the supporters of this legislation to go to a senior center in their State, to go to the coffee shop on Main Street, to go to the churches and explain to the seniors they meet why their Medicare benefits are being stunted to give a \$12 billion handout to HMOs. Explain to them why, with all the Medicare improvements that could be made with \$12 billion, this bill decided the best use of that money is to inflate the profits of an HMO industry that is expected to make \$6 billion this year.

This bill not only undermines Medicare, we find 6 million senior citizens and disabled people on Medicaid—the poorest of the poor—will be worse off. Their out-of-pocket payments will be raised, and their access to drugs could be curtailed.

Two to 3 million people with good employer retiree drug coverage will lose it, according to CBO estimates. This means almost a quarter of all Medicare beneficiaries will be worse off the day this bill passes.

This legislation reimposes the asset test, retreats from the positive things in the Senate bill. Not only does this agreement put all the dreadful things in that harm senior citizens, it unravels Medicare by reimposing the asset test. Three million people who were protected with the Senate bill are cut off in this program.

Finally, this conference puts in place an unrestricted program on health savings accounts, what used to be called medical savings accounts. They provide billions of new tax breaks for the healthy and the wealthy.

The PRESIDING OFFICER. The Senator has consumed all but 2 minutes.

Mr. KENNEDY. Worse, they encourage the healthy and wealthy to take high deductible policies, policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into a tax-free savings account, but it is not good for ordinary working people.

We all know what is going on here. Not a word in this controversy is about prescription drugs for senior citizens. We have an agreement on that. In the Senate we had a solid bipartisan compromise that would have helped millions of seniors pay for the drugs they so desperately need. It was not full coverage, but it was a good start. That is not the issue here. We could send the bipartisan Senate bill to the White House this afternoon. President Bush could sign it before supper. But Republicans will not do that. They are holding prescription drug coverage hostage to their plan to destroy Medicare. They could never pass that plan on its own, so they are adding it to the prescription drug bill. Shame on them.

They say they have to destroy Medicare in order to save it. That is nonsense. There is nothing wrong with Medicare that Republicans can fix.

There is still time to do what is right. Let's stand up for senior citizens and for prescription drug coverage of Medicare. Let's stand up against this conference report and these shameful assaults on Medicare.

I will include at this point the organizations opposed to the Medicare conference report. Included are the National Committee to Preserve Social Security; the Alliance for Retired Americans; Families USA; Medicare Rights Center; Center for Medicare Advocacy; Consumers Union; National Senior Citizens Law Center; NETWORK: A Catholic Social Justice Lobby; American Public Health Association; the American Federation of State, County, and Municipal Employees; the American Federation of Teachers; NEA; Service Employees International Union; AFL-CIO; Older Women's League—there are close to 40

groups here. I ask unanimous consent that list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS OPPOSED TO MEDICARE
CONFERENCE REPORT

National committee to Preserve Social Security and Medicare
Alliance for Retired Americans
Families USA
US Action
Medicare Rights Center
Center for Medicare Advocacy
Consumers Union
National Health Law Program
National Senior Citizens Law Center
New York State Alliance for Retired Americans
Seniors Citizens Law, Albuquerque, NM
Legal Assistance to the Elderly, San Francisco, CA
Medicare Advocacy Project of Greater Boston Legal Services
Connecticut Association of Area Agencies on Aging
PRO Seniors Health Care Consumer Rights Project
NETWORK: A Catholic Social Justice Lobby
American Public Health Association
Arizona Center for Disability Law
Center for Health Care Rights, Los Angeles, CA
Florida Community Health Action Information Network
Florida Legal Services
Human Services Coalition of Miami Dade County
United Food and Commercial Workers
United Auto Workers
American Federation of State, County, and Municipal Employees
American Federation of Teachers
International Association of Fire Fighters
National Education Association
Service Employees International Union
AFL-CIO
International Association of Machinists and Aerospace Workers
International Longshore and Warehouse Union
Transport Workers Union of America
United Steelworkers of America
National Association of Area Agencies on Aging and the Center for Aging Policy
Older Women's League
National Taxpayers Union
United Food and Commercial Workers International Union.

The PRESIDING OFFICER (Mr. CRAPO). The Senator's time has expired.

Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I think Senator CORNYN is seeking recognition.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I came to the floor because I know this is the time that was set aside to talk about the nomination of MG Robert Clark and his promotion to lieutenant general. I want to talk about that in just a moment.

I would say I have been interested in listening to the comments of the Senator from Massachusetts on another topic, on the Medicare conference report that will soon come to the floor. I must confess when that bill was first considered by this body, I could not

support it. It was always my hope that once it went through the conference committee it would be improved. Indeed, from what I know of the bill so far, it has been. But I am so far undecided on how to vote on the conference report.

Mr. DAYTON. Mr. President, will the Senator yield for a question? What is the order of business before the Senate?

The PRESIDING OFFICER. Does the Senator from Texas yield for a question?

Mr. CORNYN. Mr. President, if I can conclude my remarks, then I would be glad to yield for a question in the time that remains.

My concern was about some of the comments made or the characterization made about the bill as being the product of some rightwing agenda. I do note in the announcement I heard, along with the American people, on Saturday, with the majority leader and Chairman CHUCK GRASSLEY of the Senate Finance Committee seated there, and also the Speaker of the House DENNY HASTERT, and others, including the ranking member of the Senate Finance Committee, MAX BAUCUS, who is a Democrat, and JOHN BREAUX, the Senator from Louisiana, another Democrat, who both have been leaders on Medicare reform, and what was announced was a bipartisan conference committee agreement on principles.

I do not know how this debate will ultimately pan out, but I do not believe the debate is advanced by, frankly, characterizing it as a product of some conspiracy or captive of some special interest agenda. I do know there are a lot of people who have been active on this issue on both sides of the aisle who support the bill. There are others who express concerns, and I want to explore those in the coming days in deciding how I might ultimately vote.

But, Mr. President, I came to the floor to talk about what I thought was the subject of the day and of this hour, which is the promotion of MG Robert Clark to lieutenant general.

First and foremost, I am well aware of some of the concerns that have been expressed about Major General Clark. I do not believe these concerns are based on any facts, but perhaps sentiment alone.

As we know, as the record reflects, in July 1999, a soldier named PFC Barry Winchell in General Clark's division was murdered by a fellow soldier at Fort Campbell in Kentucky. It is alleged this young man was murdered because he was perceived to be a homosexual.

I am sure I speak for the entire Senate when I say such inhumane acts deserve every condemnation. My heart, and that of others, goes out to the friends and family of Barry Winchell as they mourn his untimely demise.

The perpetrators of this heinous crime were, however, punished to the fullest extent of the law. As the convening authority for the court-martial,

Major General Clark played a key role in ensuring the people who savagely killed Private First Class Winchell were, in fact, brought to justice.

Unfortunately, there are those who want to unfairly blame major General Clark for this tragic death.

This is a very serious charge and should not be made lightly. I commend Chairman WARNER for his excellent work in making sure that this nomination has been carefully considered by the Senate Armed Services Committee. In fact, the committee spent more than a year looking into this tragic situation so that we could make sure we knew everything that could be known about the facts and circumstances involving Private First Class Winchell's death and any alleged culpability or responsibility that General Clark might bear for this tragedy.

This is what we learned. The Department of the Army inspector general conducted a full investigation into the facts and circumstances of the death of Private First Class Winchell at Major General Clark's request. The inspector general also conducted an overall command climate assessment at Fort Campbell which, as Chairman WARNER pointed out, consisted of, at the time, about 25,000 soldiers. Neither the investigation nor the command climate assessment found that Major General Clark was in any way responsible for this sad event. The record, in fact, demonstrates that General Clark conducted himself as a consummate professional, before and after the homicide. He adopted enhanced unit level training programs to ensure that Department of Defense policy was understood and implemented. And he repeatedly took personal action to communicate the requirements of the proper conduct and respect each soldier deserves.

The murder of Barry Winchell was indeed a tragedy. But it would be wrong to allow the career of a great American soldier to be ended over false allegations of some vague perceived shortcomings, when it is clear that he joins all of us in condemning the despicable actions of the drunken soldier that took Barry Winchell's life.

General Clark is more than worthy of promotion to lieutenant general. A San Antonio native, General Clark is a graduate of Texas Tech University and, like many brave Texans, he chose to serve his country in a military career. In fact, 1 out of every 10 men and women in uniform today is from the State of Texas, something of which we are immensely proud. What a career General Clark has had, spanning more than three decades on as many continents. Among other decorations, General Clark has received the Distinguished Service Medal, the Legion of Merit with four Oak Leaf Clusters, the Bronze Star for Valor, and the Bronze Star with Oak Leaf Cluster for his service.

To my mind, these achievements alone would merit his promotion. His

record demonstrates that he has been a fine officer and, indeed, a great American patriot.

But there is also this: When Major General Clark was only First Lieutenant Clark, barely a year in uniform, he was serving in Vietnam as the first platoon leader of Company A, the Second Battalion of the 8th Calvary, the 1st Calvary Division. As his men were being extracted from hostile territory following a ground reconnaissance mission, they were engaged by enemy mortar fire, and the first two rounds caused heavy casualties, including Lieutenant Clark. A lesser soldier might have faltered in this situation, but even though he was wounded, Lieutenant Clark did not forget his foremost duty was to his own men. With total disregard for his personal safety, for his wounds, Lieutenant Clark put himself in the line of mortar fire again to carry wounded members of his company out of harm's way. He bravely moved from position to position, urging his men on until help arrived.

For his wounds, Lieutenant Clark was awarded the Purple Heart; for his valor, the Bronze Star.

General Clark has literally bled for his country. He has put his life on the line for his men and, yes, for us. He has dedicated himself to defending American freedoms against all enemies. In short, he is a true American patriot.

There are brave young men and women who today are doing exactly the same thing that General Clark was doing then: fighting for the cause of freedom and democracy in the ongoing war on terror. They are serving a just cause with bravery and dedication. I can think of no better leader than Major General Clark to serve as a living example to them, the next generation of American heroes.

I yield back any remaining time to the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I think the Senator from Minnesota is to be recognized next. Is there a time agreement, to clarify my own understanding?

The PRESIDING OFFICER. The Senator from Alabama controls 29 minutes at this point. The minority controls almost 20 minutes.

Mr. SESSIONS. I thank the Chair.

The PRESIDING OFFICER. Under the agreement, 15 of the minority's 20 minutes is pledged to the Senator from Minnesota.

Mr. SESSIONS. I see. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. I thank my colleague from Alabama. I had not intended to interrupt my distinguished colleague from Texas with whom I have traveled to Iraq and other places, but I misunderstood exactly where we were, given the subject matter that was being discussed. I apologize for the interruption. I will focus my remarks

on this matter because it is one that is deserving of all the attention and concern of the Members of this body, and it is a very difficult matter, one that I wish we didn't have to confront in this Chamber and one I wish we didn't have to confront in this country.

But we do. We have a general with, generally, a very distinguished record, who now has been nominated for promotion to a very high office, commanding general of the Fifth Army. I have the greatest respect for the top echelon of our military command, as I have come to watch them, work with them, see their dedication and their professionalism and their compassion and concern for the men and women under their command. I regret having to raise these questions about any one of them.

But we have a dead American soldier on the other hand, a young man who lost his life while in uniform, while in the service of his country. He wasn't murdered in Iraq, as some of our brave soldiers are these days, or in Afghanistan, or somewhere else. He wasn't in a training accident, as some soldiers from Minnesota have been, in this country or abroad.

He was murdered. He was murdered by his own fellow American soldiers. His crime? His crime was that he was perceived and believed to be gay. I use that word "crime" rhetorically because I don't believe—I don't think Americans believe—that the sexual preference of an individual is a crime or should be a crime. It is not a crime in this country, punishable by death.

That can only happen in a country such as Iraq, or some country with a vicious totalitarian regime, where if someone is different in any way and somebody decides it is wrong, they are not only excluded by society or discriminated against, but they are harassed, tortured, or executed. But not in the United States of America.

However, it happened in this country at Fort Campbell, KY, in 1999, under General Clark's command. The soldiers who committed that terrible crime have been prosecuted, convicted, and are serving sentences.

The military system that allowed that atrocity to occur remains. It is a system which permitted a succession of actions—from taunts, humiliations, bullying, all sorts of prejudice, immoral and illegal behavior—to occur and recur. What happened as a consequence? Nothing. Nothing. Nothing, unfortunately, is what happens most of the time in the Army of this country today.

I am very proud of that Army in many respects, but I am not proud of an Army, or any other institution in this country, that permits discrimination against men and women because of their sexual preference. It is just that nothing usually happens when young women are assaulted and raped at the Air Force Academy—another matter we are dealing with on the Armed Services Committee. Their "crime" is that they are women.

Women have been admitted to the Air Force Academy for 30 years and have been flying side by side in airplanes, and taking all of the risks, and doing as well as their counterparts. But they are being assaulted and raped time after time. We have discovered that at the Air Force Academy, what has usually happened to the perpetrators of those crimes is very little or nothing.

These are impressionable young men and women in our Armed Forces—most of them. They are outstanding young men and women. I have interviewed a number of them. I think all of us have that responsibility. I find, when I have the opportunity to interview young men and women who are seeking admission to or nomination to our military academies, that they are really fine young men and women. There is a lot of competition to get in. When I have those interviews, when I am talking to other young men and women in uniform as I travel back and forth, I don't see these kinds of attitudes. I don't see young men and women who are looking at their fellow soldiers with this kind of prejudice or are considering these kinds of atrocities.

I just visited, in Minnesota over the weekend, a soldier who had one side of his arm shredded while serving in the Iraqi theater. He is recovering, thank God. He is a 21-year-old young man. He will recover. Another young Minnesotan lost most of his right leg, but he has great spirit and morale and he will live a great life.

But I have also visited parents of young men and women who are not recovering, who are not coming home because they paid the ultimate price for their service. I am on the Armed Services Committee, and when I look at the reports and the casualty figures of the brave young Americans who are being injured or wounded or maimed or who died in combat, I don't see categories of "heterosexual" or "gay" or "lesbian" and I don't see "women" or "men." I see American soldiers, with the same kind of blood and bodies. All they are asking is an equal opportunity to serve their country, to risk their lives in the service of their country—even to die in the service of their country.

Amazingly enough, that is what these young women who are going to the Air Force Academy, and the young men and women entering the Armed Forces, who have a same-sex affinity—that is what they want, the same opportunity to fight, to be heroic, and even to die for their country.

That is what makes it so inexplicable and inexcusable and unforgivable when they are discriminated against, when they are treated the way they are, and when they have nowhere to turn.

So who is responsible? Who is accountable? Who loses a rank or a promotion or a star because a gay soldier was murdered under his command? General Clark's actions following that atrocity were questionable and, I would

say, barely marginal. General Clark's actions in many other instances throughout his distinguished career have been extraordinary, heroic, and commendable, and I salute him for them. But it wasn't only his actions after this atrocity that were called into question; it was the actions and inaction before this occurred, which permitted in this environment of opportunities for repeated discrimination and harassment—for an NCO who was clearly unfit to be responsible for impressionable young men who, by his own conduct—or misconduct—showed them how not to treat a fellow soldier. That is what concerns me about this today.

I expect we will confirm General Clark's promotion. He will go on, and I hope he performs with great distinction, as I believe he will, as a commanding general of the 5th Army. But what is going to happen to all the other gay and lesbian soldiers out there? What kind of message are we sending to them? What kind of message do we send to the young women who get raped at the Air Force Academy when they see those who commit the terrible acts being promoted? What happens to a military's network of people when those promotions occur untouched by these kinds of atrocities, and eventually they are the military command or they are throughout the military command? How are we ever going to change what is going on in these situations if no one is held accountable, if there is no consequence for not doing what a commander should do—what in some instances they are required by law to do?

Regardless, common sense and decency and morality would tell them that anybody responsible for the lives of young people ought to keep people from ganging up or abusing or assaulting or picking on or murdering a fellow human being—not to mention a fellow soldier but a fellow American citizen. What happens to all of us when we let that go on?

As I said earlier, I think the U.S. military is outstanding in so many respects. It is that institution where, historically, young men and women have been able to come from all over the country, all different backgrounds; it is the great opportunity provider. It doesn't matter if your parents don't have any money or if you don't have much education; you can find yourself and become somebody and either serve with great distinction and make it a career or you can come back into society and do just as well. But you are not going to be that kind of person or that kind of professional or that kind of citizen or leader of this country if you are learning that is what happens, and that is OK, and those who do it get promoted, and those who are the victims suffer the terrible consequences.

That is a terribly destructive message to those individuals, a terribly destructive result to our Nation; and if this body means the concerns it ex-

pressed here—and I take them at good faith, but if we mean that, we are not going to be satisfied, and we should not be, by doing nothing other than promoting this general today.

We owe it to those men and women who have suffered, and those who have lost their lives through these atrocities, to take responsibility and tell the military, because we are the civilian command, that we are not going to do it; the buck stops here because no one else will, that we are going to insist on an armed forces that reflects, represents, and defends the standards of the basic decency the founding principles of this country that all men and women are created equal, they are endowed by their Creator with certain unalienable rights, that among them are life, liberty, and the pursuit of happiness, and the right to defend their country and be a patriot and not have somebody attacking them, humiliating them, or murdering them because of who they are.

That is the responsibility of leadership. That starts at the top, all the way down. It does not come from the bottom because that is where the base level is. It has to come from the top, from the commanders, from the civilians who are responsible for the system which they command and for those who are putting their lives, their hopes, their dreams, and their careers on the line. We have a lot of work to do.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I yield to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank the Senator from Alabama for yielding me a few minutes to discuss the nomination of GEN Robert Clark. I rise in support of the nomination. This is a very sensitive issue and it is one that needs to be dealt with in the right way by this body, and I think it has been.

The tragic death of PVT Barry Winchell should never have occurred, nor should any murder of that sort. The fact is, once it did occur, General Clark did everything within his power, first, to see that justice was done.

During the course of seeing that justice was done, there was a review of all of his procedures and regulations that were in place at Fort Campbell relative to the circumstances that led up to this unfortunate death. General Clark was somewhat handicapped by not being able to speak out openly and publicly after the death because he was a convening authority for the court-martial and therefore he could not really come forward and have a whole lot to say about the facts and circumstances leading up to the death of Private Winchell.

The fact is that he did make some changes in the procedures. He did make sure other regulations that had been in place prior to this unfortunate death

were enforced to an even greater degree than at the time this incident occurred.

It is truly a tragic situation that was of great concern to General Clark. I have had the opportunity to visit with him on a couple of different occasions, and one does not have to talk with him very long to see the concern in his eyes and in his heart relative to the death of Private Winchell.

I have also had the opportunity to meet with Private Winchell's parents. Again, we expressed to them deep sorrow and that our prayers go out to them. No matter what, we cannot bring their son back. I think we do need to make sure that as we move through this process we review what was done relative to the facts and circumstances leading up to this terrible murder and the facts and circumstances as they occurred after the death of Private Winchell.

As I reviewed this situation with General Clark and as I looked at the IG investigation that he ordered to take place after the death occurred and after the court-martial was completed, it is pretty obvious that he did everything he could have done to ensure that justice was done and that the atmosphere surrounding the troops at Fort Campbell was not poisoned and everybody was treated in an equal and fair manner.

It is very unfortunate that this situation had to occur, but at the same time it is very important that we make sure the procedures of the Army are followed very closely, and they were. It is very important that we make sure the sensitivity directed towards the family has taken place, and I believe it has. It has not been a perfect situation. General Clark, just as any officer or any individual in the corporate structure of any company in America, can look back on a situation as tragic as this and say that maybe they should have done something a little bit differently. The fact is, General Clark has always provided strong leadership during his career in the U.S. Army, and I think, once again, he exhibited strong leadership.

He did everything within his power to see that justice was done and to see that appropriate rules and regulations were put in place where they needed to be and that they were carried out to the highest degree. So I rise in support of GEN Clark, and I hope my colleagues will see fit to confirm his nomination.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I will vote against the nomination of Major General Robert T. Clark to the rank of Lieutenant General and to the position of Commander, United States Fifth Army.

Former President Harry Truman placed a sign on his desk in the Oval Office that read "The Buck Stops Here." As Commander in Chief of the United States Armed Services, President Truman took full responsibility

for every action that took place under his watch, at every rank. He never shifted blame, and he never accepted failure.

The same, cannot be said for General Clark.

In 1999, while General Clark was the commanding officer at Fort Campbell in Kentucky, Private First Class Barry Winchell was bludgeoned to death with a baseball bat by a fellow soldier who believed that Private Winchell was gay.

Did General Clark immediately accept responsibility for this terrible incident? Did he use his position of authority to stamp out the hateful and dangerous climate of anti-gay sentiment on the base?

No, he did not. Instead, General Clark claimed that there wasn't anything wrong on his base, denying that a vile culture of hate and harassment against gays had been pervasive for some time. But his sentiments do not jibe with reports from soldiers at the base detailing widespread harassment of soldiers thought to be homosexual and the ubiquitous presence of anti-gay graffiti.

The hazing and harassment that Private Winchell experienced before his murder were so pernicious that he bravely reported these episodes to the inspector general. This was a very risky course of action because it could have led to Private Winchell's discharge under the "Don't Ask, Don't Tell" policy.

On his departure from Fort Campbell, General Clark declared, "There is not, nor has there ever been during my time here, a climate of homophobia on post." Tell that to Barry Winchell's family.

Apparently, the buck did not stop with General Clark. Instead of addressing the problem of homophobia at Fort Campbell, General Clark ignored it. Immediately after Private Winchell's murder, General Clark remained silent. He did not condemn anti-gay behavior on his base. He refused to meet with gay rights organizations who simply wanted to address the homophobia prevalent there. Surprisingly, General Clark failed to request the psychological and training services provided by the Army on how to address anti-gay harassment after the murder.

General Clark even delayed meeting with Private Winchell's family—despite their repeated entreaties—for almost 4 years after his murder. I find this particularly inexplicable and excusable.

The tragic murder of Private Winchell was not the only problem occurring at Fort Campbell. According to an Inspector General review of the base, Fort Campbell suffered from low morale, dilapidated barracks in need of repair, inadequate health care, and significant problems with underage drinking.

Today, the Senate faces the decision whether to promote General Clark to a very high-ranking position in the U.S.

military. This position requires proven leadership skills.

I do not think that General Clark showed leadership at Fort Campbell, either before or after Private Winchell was murdered. He let Private Winchell down. He passed the buck.

I rise today to say that General Clark's lack of leadership at Fort Campbell dissuade me from supporting his promotion. I believe this promotion sends the wrong message about what we expect from our commanding officers, especially now in a time of war.

I served in the Army Signal Corps in Europe during World War II. Over the course of my three years of service, I never encountered a superior officer who avoided responsibility for his soldiers or their actions. Each and every one of my commanding officers expected and demanded the best from me; their leadership, in turn, inspired me to do my best.

I don't think Major General Clark inspires such dedication and service. Therefore, I will vote against this nomination and urge my colleagues to do the same.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, I oppose the nomination of MG Robert T. Clark to the rank of lieutenant general. The facts surrounding his conduct, prior to and after the murder of PFC Barry Winchell, raise questions about his leadership and judgment that have not been answered to my satisfaction.

The Inspector General of the Army, while clearing Major General Clark of fostering a hostile environment at Fort Campbell, raised serious issues about discipline at the base. Furthermore, some of Major General Clark's actions after Private Winchell's murder raise legitimate questions about his fitness for higher command. In the immediate aftermath of the murder, for example, a public affairs officer at the base issued a statement describing the murder as a "physical altercation in a post barracks." This gross distortion of the facts was not corrected. In fact, Private Winchell had been asleep at the time his murderer struck, goaded on by other soldiers. General Clark took no steps to correct this claim in public, and later defended his action as in keeping with his mandate not to prejudice the ongoing investigation. Regrettably, these actions leave the appearance of a general officer who did not want the negative attention that would result from a hate crime under his command.

General Officers are rightly held to incredibly high standards of conduct, and they should be. The men and women under their command are worthy of no less. In this case, Major General Clark appears to have come up short, as evidenced by the Senate Armed Services Committee's failure to pass this nomination unanimously. Instead of clarity, the nomination process has left us with lingering concerns

about the general's fitness for higher command.

Mr. President, I recognize and appreciate Major General Clark's long service in the Armed Forces of our country. But there remain too many legitimate questions about his leadership and judgment stemming from his command of the 101st Airborne at the time of Private Winchell's murder to confirm his nomination to the rank of lieutenant general.●

Mr. FEINGOLD. Mr. President, I want to speak today on the nomination for promotion of Major General Robert T. Clark and the broader issue of the Department of Defense's "Don't Ask, Don't Tell" policy. The unusually lengthy and controversial nomination of General Clark has, once again, brought attention to the failure of the Pentagon's policy towards gay servicemembers. It is high time that we stop this policy of codified discrimination against our brave servicemen and women who happen to be gay.

I fear that this policy may have been a contributing factor in the June 5, 1999, brutal murder of PVT Barry Winchell at Fort Campbell, KY, a base commanded by General Clark. I will not reiterate the facts of that case at this time, but I will say that there are strong indications that there was a pervasive and hostile anti-gay climate at Fort Campbell both before and after the tragic murder of Private Winchell and that the base leadership, including General Clark, appears to have done little, if anything, to address it.

Mr. President, the "Don't Ask, Don't Tell" policy has failed. It failed to give Private Winchell useful options to combat the harassment he faced during the months prior to his murder. It failed to force General Clark to take effective action to eliminate the anti-gay climate at Fort Campbell. And it continues to fail to stop the discrimination and harassment faced by our brave gay servicemembers.

I want to take this opportunity to urge the Pentagon to begin instituting changes to its policy towards gay servicemembers. The Pentagon should provide, at a minimum, a safe place for gay and lesbian servicemembers to report harassment without fear that they will be kicked out of the military because of their sexual orientation. This modest step would be one small way to honor the memory of Private Winchell and to prevent what happened to him from ever happening again.

Mr. AKAKA. Mr. President, I rise today to discuss the promotion of Major General Robert T. Clark to Lieutenant General in the United States Army, which is pending consideration by the Senate. On October 23, 2003, the Senate Committee on Armed Services voted to favorably report General Clark's promotion for consideration by the Senate. The vote taken was a voice vote. I asked, however, that the record reflect that had there been a recorded vote, I would have voted to oppose this promotion.

I have deep respect and admiration for our military leaders. I have often said that anyone who achieves the rank of a flag or general officer deserves a Ph.D. for the amount of education and training they have successfully completed to attain such distinguished rank. In my capacity as a member of the Senate Armed Services Committee and the co-chair of the Senate Army Caucus, I have had the privilege of working with many of our Nation's most respected military leaders.

This has been a difficult decision for me. General Clark's promotion has been pending consideration before the Senate Armed Services Committee for 14 months. Military promotions are usually very simple to consider, and are rarely troublesome or controversial. I normally do not hear from my constituency about a military promotion. In this case, however, I was contacted by a number of my constituents asking me to oppose General Clark's promotion, primarily for his actions as Commanding General of the 101st Airborne Division at Fort Campbell, KY, during a difficult time when PFC Barry Winchell was murdered. For this reason, I made sure that I had the opportunity to review as much material as possible pertaining to General Clark's career as well as the facts surrounding the incident that led to Private First Class Winchell's death.

In March 2003, I joined some of my colleagues in writing a letter to the distinguished chairman and ranking member of the Senate Armed Services Committee to request information regarding the specific actions General Clark took to eliminate the climate of anti-gay harassment that existed at Fort Campbell prior to Private First Class Winchell's death; statements General Clark made regarding antigay harassment to officers, soldiers, and the public; the policies he promulgated addressing this issue; other steps he took to prevent further acts of violence and harassment; how he handled the Winchell case in comparison to other serious crimes occurring during his command; and his response, as well as the response of those around him, to requests by Private First Class Winchell's family to meet with him. I reviewed the information provided and participated in an executive session held on October 23, 2003, where General Clark was available for questions.

After reviewing all of the information and listening to General Clark's testimony, I decided that I could not support his promotion to Lieutenant General. General Clark's professional record reflects many distinguished accomplishments as a military officer. However, I remain concerned about his lack of what I believe to be leadership qualities that are necessary for today's military leaders.

I remain disturbed by General Clark's continued reliance on lack of knowledge regarding misconduct and antigay harassment on post as a rationale for his lack of action. General

Clark had been in command of the 101st Airborne Division for 17 months prior to Private First Class Winchell's death. While I understand a commanding general is not responsible for the individual actions of his soldiers, I firmly believe that a commanding general sets the tone on an installation and can influence what his soldiers believe will be considered "acceptable" behavior. I was disturbed to learn of repeated instances of underage drinking and harassment, and of the assessment, particularly of those soldiers in Private First Class Winchell's unit, of the command climate prior to Private First Class Winchell's death.

I am also disturbed by General Clark's refusal to take responsibility for the incident. During his tenure as Chief of Staff of the Army, General Eric Shinseki took responsibility for what happened to Private First Class Winchell. This reflects official Army policy that commanders at all levels are accountable for everything their command does or fails to do. As a leader, I believe General Clark should have taken responsibility or expressed accountability for the circumstances that led to this Private First Class Winchell's death.

I believe his failure to initiate a meeting with Private First Class Winchell's family reflects poor leadership on his part. His position as convening authority did not prevent him from meeting with the parents of a soldier murdered on an installation over which he had command and responsibility.

Again, General Clark's record reflects that he has led a distinguished military career. However, I do not believe his actions as the Commanding General of the 101st Airborne Division at Fort Campbell, KY, warrant his promotion to lieutenant general.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this has been a very difficult nomination for the Armed Services Committee. We worked very hard for over a year to ensure that we developed all of the relevant facts so we could make an informed decision. In fact, this nomination was first sent to the Congress in the last session and then was resubmitted in this session.

It is totally appropriate that we took this time to address Major General Clark's nomination because PFC Barry Winchell, a soldier serving in Major General Clark's command at Fort Campbell, was brutally murdered by another soldier on July 5, 1999.

Fort Campbell is a large fort, perhaps 25,000 soldiers and 46,000 family members. We were interested in what the command climate was in Major General Clark's command, particularly as it related to his command's implementation of the Department's Homosexual Conduct Policy. We also wanted to see how Major General Clark responded after the murder.

Major General Clark asked the Army Inspector General to conduct an investigation into the facts and circumstances surrounding the murder. The Inspector General conducted this investigation and also conducted an assessment of the command climate at Fort Campbell before the murder. Neither the investigation nor the command climate assessment found fault with Major General Clark's actions.

We met with Private Winchell's family. We met with Major General Clark on a number of occasions. We met with other Army officials. We met with organizations and individuals who expressed an interest in this nomination. So under Senator WARNER's leadership, I believe our committee has given full consideration to the nomination of Major General Clark and the events which have to be described as tragic when considering that nomination.

Every one of us, every human being who has knowledge of this incident, is appalled by the brutal murder of a soldier sleeping in his barracks. So we first wanted to look at, again, the incident and the command climate prior to the incident. We reviewed the Inspector General's report that stated that the chain of command, from commanding general through company leaders, responded appropriately to matters with respect to the enforcement of the Department of Defense Homosexual Conduct Policy.

One of the most difficult issues had to do with the statement of Private Winchell's family that they requested a personal meeting with Major General Clark and they did not receive a personal meeting with him.

I think the fact they made that request and it was not complied with was troubling to all of us. As we dug into it, we heard from Major General Clark on this issue. He looked us in the eye and said he never received such a request. That is not to say the request was not made. It is to say that I think most of us believed Major General Clark when he said that request was never forwarded to him. What happened to that request we do not know, and perhaps nobody ever will know.

Major General Clark wrote a letter to the family. It was a heartfelt letter. It was a personal letter about the death of their son. It was really a comment that he added in that letter, which was so personal and so heartfelt, that I think persuaded many of us that he was honest when he stated that there is no way he would not respond to a family request to meet with him.

As others have mentioned, he did have a special responsibility, as the General Court-Martial Convening Authority, to ensure that justice was done and to make sure nothing he would say would in any way create error in that trial.

The murderer, PVT Calvin Glover, was convicted of premeditated murder by the court-martial, which was convened by Major General Clark. He was sentenced to life imprisonment and, of

course, a dishonorable discharge from the Army.

Another soldier was convicted of obstruction of justice and making a false official statement and was sentenced to 12½ years confinement and a dishonorable discharge.

To the extent that justice can ever be done following a brutal murder of this kind, justice was done in this case. It was done under the leadership of the convening authority, Major General Clark himself.

In the end, looking at all the information that is available to us, I have concluded that we should confirm this nomination and that it would be appropriate, at the same time, however, for us to take note of the events relative to this nomination, that surround it, the length of time this nomination has been pending, all of the inquiries and investigations and reports which have been requested, and hope all of this together will lead to a different environment and a different climate in the unit at issue here.

I ask for 1 additional minute, if I may, from the majority side.

Mr. SESSIONS. The Senator can use that from the majority side.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LEVIN. I thank the Senator from Alabama.

When we put all this together, the hope, I think of all of us, is that the kind of climate that apparently existed in that one unit, not known to Major General Clark—because the Inspector General found no evidence that he knew of any anti-gay climate in any of the units, much less that one. There was in one unit some anti-gay rhetoric which was immediately responded to by the captain in charge of that unit. As a matter of fact, the captain counseled the noncommissioned officer and put an immediate end to the anti-gay rhetoric. But that was not known to General Clark.

For all these reasons, I think it is appropriate we now confirm this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator LEVIN for his work on this issue, and Senator WARNER's efforts as the Chairman. Senator LEVIN and Senator WARNER have discussed this issue in great detail. Senator WARNER made clear he was going to take it seriously, that there would be ample opportunity to evaluate any questions that arose from these terrible circumstances, and that the facts would come out in committee and could be presented forthwith. That was done. We heard all of the information that was available. I would note it is time, now, to move forward.

General Clark's nomination has been blocked for over a year now. He is a tremendously fine soldier. He is just not the one responsible here. I also should note that I do not think it is

correct, as some have indicated, to say people who fail to adhere to DOD policy get promoted. General Clark acted aggressively against the climate and the actions that resulted in this terrible murder.

In July of 1999, PVT Barry Winchell was a member of the 502nd Infantry Regiment. He was murdered in his bed as a result of a brutal assault by another private, Calvin Glover. Before his death, Winchell had been perceived as gay by Private Glover, and Winchell had complained about harassment in his company to superiors.

I should note that there was evidence that a platoon sergeant had made insensitive comments about gays, but there was not evidence of command responsibility in any way.

In December of 1999, after General Clark convened a court-martial and a trial was conducted, Private Glover was convicted of first-degree premeditated murder and was given life without parole. The individual who was Private Glover's buddy, who obstructed the investigation to some degree, was given 12 years in jail, without parole. He is serving that time.

I know the Chair has served as a lawyer and clerk to Federal judges. General Clark was the convening authority for a general court-martial. He was the superior commander on a base with 25,000 people. We don't hold mayors responsible for crimes committed in cities of 25,000 people. In fact, one of the highest crime rates in America is among young males. So, what we have in this base is 25,000 of the kind of people who, statistically, tend to get in more fights, more crimes, and commit more murders than anyone else. That is my experience as a prosecutor. I think it is indisputable that that is so.

So it is therefore not possible for a commander of a 25,000 member facility or military base, to guarantee there are not going to be fights and even murders every now and then. Heaven help us, that they occur, and the climate ought to be set in a way that minimizes that. But we cannot hold every commander responsible for this, any more than we could hold a mayor responsible for a crime in a city.

But what I wish to emphasize is that the general took a number of direct and dramatic actions to indicate, without question, his revulsion with this murder. He clearly stated his expectation that everybody at Fort Campbell would be treated with respect, and that violence of this kind is unacceptable. He was quite strong on that point.

However, he was unfairly criticized for his actions following Private Winchell's death. The criticism was unfair because in the military he is the convening authority of the courts-martial. He is required, by the Uniformed Code of Military Justice to appoint the members of the courts-martial, and he has a duty to remain objective. He has to be careful that he does not conduct himself in a way that prejudices the officers he appointed to try the case.

I served as a JAG officer for several years in the Army Reserve. I know a commanding officer has to be careful because the defense lawyers who defend soldiers charged with crimes can raise, as a defense to the trial, that the commander had prejudiced the trial by suggesting the defendant was guilty before he had a trial.

General Clark testified at his confirmation hearing in the Senate Armed Services Committee that he was in regular contact with his staff judge advocate, his lawyer, advising him what he could say, and what he could not say.

Some say he should have been more open, he should have been more condemning of this act, he should have been more aggressive. It is clear that he was acting under the legal direction of his staff judge advocate. In fact, his staff judge advocate was talking to the staff judge advocate in Washington, for the Department of Defense. They exhausted every means possible to ensure they conducted themselves properly. They sought to ensure that the trial was fairly conducted, and that if a conviction was obtained, as it was obtained, that the verdict would be upheld. It was.

I just would want to say this is not so easy, as some would suggest, for him to be really aggressive in making comments about this while a trial is ongoing.

Complaints were certainly made about his conduct afterwards. General Clark, who, if you met him, you would understand, is a man of great integrity, great decency, who wants to do the right thing, said: Look, I haven't done anything wrong. I believe I have conducted myself properly. But I am personally requesting that the inspector general investigate my conduct and my actions. I want him to come in here and investigate this situation to see if I have done anything wrong.

Of course, the IG did investigate. An IG team conducted a thorough investigation into the command climate at Fort Campbell. This investigation of the command climate found that Major General Clark was not culpable of any dereliction or failure of leadership, as has been alleged by the Service Members Legal Defense Network—SLDN—which is an advocacy group that works to protect and ensure that homosexual soldiers are treated fairly in the military, as they have every right to be treated. They have a right to insist that they be treated fairly.

It is important that people know about this crime. I know it is important that people understand how civilization sometimes is fragile and people lose discipline and do things they should never ever do.

To highlight the problem that occurred at Fort Campbell, and to take action by an advocacy group—or by the military or any decent people, or for the Senate to take action in order to ensure that these kinds of things don't happen in future—there is no illegitimacy in that.

One of the things that has troubled me in recent years in this Senate is that we feed on information that is sometimes provided by people who have an agenda. As a result of that, sometimes people are unfairly treated. Everybody deserves fair treatment. This private who was murdered did not deserve what happened to him. I also believe General Clark does not deserve some of the charges that have been made against him.

A few other points; This group claims that Major General Clark failed to follow Federal law. There is no proof of that. There is no proof that he failed to provide a safe environment for soldiers—in fact, that claim has been rejected. They claim that he failed to exhibit leadership necessary for further promotion. After the inspector general's reviews were done, that proved not to be so.

The allegations were that Major General Clark had allowed "significant levels of antigay harassment under [his] command," and that it allowed a command climate in which "antigay harassment flourished"; it was just not true. The Army IG found sporadic incidents of the use of derogatory or offensive cadence calls used during marching. These problems which were quickly corrected and stopped as soon as they were discovered. It was clearly established that anti-homosexual comments were not the norm at Fort Campbell.

There were allegations that there was anti-gay graffiti in the public areas around Fort Campbell. The Army inspector general found one latrine at a unit level and one in a public recreation center at Fort Campbell which had anti-gay comments on them. This was clearly not a common thing on the base. I suspect you would find these comments in some of the public bathrooms in cities and gas stations around America. It is wrong, but I don't think that should be something the general would be found to be responsible for. There is simply no way that he can protect against each and every one of those incidents.

It was suggested that he took no action to deal with this problem. I have one document dated November 30, 1999—not long after the incident that occurred—in which General Clark wrote his command. He sent it to everyone basically on the base.

Distribution A, Subject: Respect for all soldiers.

Paragraph 1: The soldiers in the Army today are the best we have ever had.

I certainly agree with that.

They are volunteers who merit our respect and they deserve to be treated with dignity in a climate of safety and security.

He goes on to say:

We can and will do more to ensure that our soldiers are treated with dignity and respect. I accordingly direct that:

All soldiers be briefed on the Department of Defense homosexual conduct policy upon their formal in-processing at Fort Campbell. When they come to the base.

They are to be instructed on this policy of treating people fairly and with respect. As an interim measure, every soldier at Fort Campbell will receive the briefing.

In addition, he goes on to note:

This instruction will also include the contents of the 25 October 1999 memorandum from the commanding general . . .

And another memorandum—both of which reiterate the roles and responsibilities of commanders regarding investigations of threats against or harassment of soldiers on the basis of alleged homosexuality;

Subparagraph (c): All leaders will vigorously police the contents of run and march cadences.

They have always been a little bit risque over the years. But the general took aggressive action here.

They will monitor the march and run cadences to ensure that they are positive and devoid of profanity or phrases demeaning to others.

Subparagraph (d): All leaders will vigorously police the content of training briefings, classes, lectures, and all other instructions to ensure that they are devoid of profanity or phrases demeaning to others.

Subparagraph (3) Respect for others is an Army value and a cornerstone of the discipline and esprit de corps and all soldiers will be treated with dignity and respect. Accordingly, I expect all Department of Defense, Department of Army and Fort Campbell directives, policies and regulations to be enforced by our leaders and adhered to by our soldiers.

Robert C. Clark, General.

This is a superb soldier who served his country well in Vietnam. He was awarded the Purple Heart and the Bronze Star. He was wounded in combat and refused to be evacuated until he got others out of the line of fire.

He commanded the 3rd Brigade of the 101st Airborne Division, that great division, during Operation Desert Storm, the last Gulf War. His proven leadership is clear.

In the U.S. Army Command and General Staff College "Story of the Third Army in Desert Storm" by Richard Swain, published in 1994, he talks about how General Clark's brigade moved rapidly to cut off the retreat of the Iraqi soldiers, facing tremendously bad weather. It was so bad that motorcycle troops were mired down, but he moved successfully anyway and seized the objective before other units were able to.

He is a proven commander in combat. He is a proven commander in the peacetime Army. He has taken strong action to see that this kind of activity never happens again.

I am proud of him. I am also proud to note that he obtained his master's degree at Auburn University, one of America's great universities. I had occasion to meet him and to see him testify at hearings. I thought he did a superb job. There was little doubt of his sincerity in this matter and his capability to be a great general officer.

I thank the President.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. FRIST. Mr. President, I congratulate my colleague, Senator SESSIONS, for really putting into perspective a lot of the things that have been said on the floor, allegations from the past but also with respect for this man who is a true hero, an American hero.

I rise to support his elevation to the second highest rank in the U.S. Army as Commander of U.S. Army at Fort Sam Houston.

On October 3, 1971, this young man, Robert E. Clark, first platoon leader of Company A, 2nd Battalion, 8th Cavalry of the 1st Cavalry Division, became an American hero.

It was approximately 10:30 a.m. in Bin Tuy Province of the Republic of Vietnam. Company A was completing a reconnaissance mission. As they were being extracted, the men came under heavy fire. The first two enemy mortar rounds struck hard and inflicted heavy casualties, including wounding First Lieutenant Clark. At that time, at great risk to his own personal safety, and ignoring or at least putting aside his own wounds, First Lieutenant Clark ran forward into enemy fire to carry his fellow wounded soldiers back to cover.

Throughout the battle he pressed on, moving from position to position to direct his men to lay down a constant stream of smoke in order to mark their position for the helicopters flying overhead. The record clearly shows First Lieutenant Clark's heroic action ensured the success of Company A's mission. For his bravery in combat and service in Vietnam, First Lieutenant Clark received a Purple Heart. He received two Bronze Stars, one for valor and one for service.

In a letter of recommendation on behalf of Robert Clark, the company commander wrote:

[First Lt Clark's] display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

I ask unanimous consent to have printed in the RECORD a copy of the letter of recommendation which lays out these events.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

On 3 October 1971, first Lieutenant Robert T. Clark, First Platoon Leader Of Company (A), 2d Battalion (Airmobile), 8th Cavalry, 1st Cavalry Division, distinguished himself by heroic action while on ground combat operations against a hostile enemy force in Binh Tuy Province, Republic of Vietnam. At approximately 1030 hours Company (A) were being extracted after completing a ground reconnaissance mission, when they were engaged by an undetermined size enemy force, receiving enemy mortar fire. The first two mortar rounds that impacted took a heavy toll of friendly casualties including 1LT Clark. Although wounded 1LT Clark with total disregard for his own personal safety and his wounds exposed himself to enemy mortar fire as he moved forward and assist in carrying the other wounded members under cover. 1LT Clark continued to expose himself as he moved from position to posi-

tion directing his men to lay down a constant screen of smoke marking their position to Gunships giving them fire support. 1LT Clark's heroic action and aggressiveness, enabled the mission to be a complete success. Resulting in one (1) enemy soldier killed. His display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

Mr. FRIST. In a career spanning over 30 years, Robert T. Clark has consistently displayed that uncommon courage and leadership he showed on the battlefield in Vietnam. He has earned the admiration of all who know him, both in and outside of military life.

GEN John Wickham, former Chief of Staff of the Army, says General Clark is unequivocally "one of the most ethical, moral, people-oriented and charismatic leaders I have ever known."

GEN John Keane, whom the senior Senator from Massachusetts so lavishly praised earlier, calls General Clark "a man of great character. He's a great moral force and a very compassionate person. Simply stated, he's one of the Army's very best leaders." Those are the words of GEN John Keane.

It is my honor to rise today and support this nomination of this outstanding soldier. General Clark has earned numerous awards for his extraordinary service, including four awards of the Legion of Merit, three Bronze Stars, the Purple Heart medal, four meritorious service medals, the Air Medal, the Air Commendation Medal, and numerous campaign service medals for service in Vietnam as well as Saudi Arabia.

He has earned the Combat Infantryman's Badge, the Army Staff Identification Badge, the Parachutist Badge, the Ranger Tab, and the Air Assault Badge.

During the gulf war, then Colonel Clark commanded the 3rd Brigade of the 101st Airborne. Under his leadership, the 3rd Brigade conducted one of the longest and largest airborne assaults in military history. More than 2,000 men, 50 transport vehicles, artillery, and tons of fuel and ammunition were air lifted at that time 50 miles into Iraq. Land vehicles took another 2,000 troops deep into the Iraqi territory. All of this was accomplished in 72 hours without a single American casualty. Only two Iraqi soldiers were killed and 22 wounded.

With characteristic modesty, General Clark explained the brigade's truly remarkable success by saying, "We're the first guys who ask them to lay down their weapons, and they did. It just took a little convincing."

General Clark earned a Bronze Star for his command of the historic mission.

In 1998, General Clark was elevated to command the 101st Airborne Division at Fort Campbell, which, as most know, is situated on the border of Tennessee and Kentucky. Indeed, Fort Campbell can be described as a small to midsize city comprised of about 50,000

soldiers and civilians. There are homes, schools, a fire department. It is a complex and diverse place. During his 2-year tenure there—and I had the opportunity to meet with General Clark there on several occasions—General Clark's reputation for fairness and compassion extended way beyond the base, well into the surrounding community.

In February of 2000, the Clarksville City Council unanimously passed a resolution praising General Clark for his "high standards of leadership, professionalism, and integrity."

The Montgomery County Board of Commissioners passed a similar resolution declaring:

General Clark's reputation in the local communities is highly acknowledged as one of the brightest, caring, and respected division commanders that the Army has sent to our local community.

Indeed, General Clark is one of the finest men in uniform today. He currently serves as the acting commander of the 5th U.S. Army at Fort Sam Houston. I should mention, as an aside, that General Clark requested the assignment so that he could take care of his wife who suffers from a chronic illness.

General Clark's peers call him "a soldier's soldier." He descends from two generations of Clark men who have served the Army with dedication and honor.

And thus, as I began a few minutes ago, I close by saying, and I do call him a true hero. I strongly support his elevation to the second highest rank in the U.S. Army.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The nomination was confirmed.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, Executive Calendar items 436 through 450, and all remaining nominations on the Secretary's desk, are confirmed; the motions to reconsider are tabled, the President is notified, and the Senate returns to legislative session.

The nominations considered and confirmed en bloc are as follows:

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Victor E. Renuart, Jr., 0278

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Richard V. Reynolds, 1156

The following named officer for appointment in the United States Air Force to the